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Supreme Court of the United States

OCTOBER TERM, 1969

No. 977

GEORGE K. WYMAN, individually and as Commissioner of the State of New York, Department of Social Services, JACK R. GOLDBERG, individually and as Commissioner of the Department of Social Services of the City of New York,

Appellants,

against

BARBARA JAMES, individually and on behalf of her minor child, MAURICE JAMES, and on behalf of all other persons similarly situated,

Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

JURISDICTIONAL STATEMENT filed December 22, 1969
PROBABLE JURISDICTION NOTED February 24, 1970

Docket Entries.

June	6-69	Filed complaint for a 3-judge court, etc.
June	6-69	Filed Order to Show Cause re: Prel. Inj. Ret.
June	6-69	Filed Plaintiffs Memorandum of Law in support of temp. restraining order, etc.

Docket Entries.

June 9-69 Filed summons and return. Served defendants on 6/6/69.

June 6-69 Filed order appointing David Gilman to serve summons and complaint. Clerk.

June 12-69 Filed Memorandum of Law in behalf of deft. Wyman in opposition to motions. (filed in court).

June 12-69 Filed (in court) Affidavit of Brenda Soloff in opposition.

June 13-69 Filed Temporary Restraining Order. Defendants, their successors, etc. are restrained as indicated, pending determination by a 3-judge court, etc. Tenney, J.

June 13-69 Filed Plaintiffs Memorandum of Law in support of temp. restraining order.

June 13-69 Filed Opinion #35941. Tenney, J. Without intimating any opinion on the merits of the within action, it seems abundantly clear that the recent decisions necessitate the convening of a 3-judge district court to consider the substantial constitutional questions relating both to the 4th Amendment's stricture against unreasonable searches and seizures and to the penumbral right of privacy and repose raised herein. In order to effectuate the terms of this opinion a temporary restraining order has been entered effective at 4:00 P.M. on 6/13/69. So ordered. (mailed notice).

June 23-69 Filed Pltffs supplemental affidavits in support of Pltffs motion for preliminary and permanent injunction.

Docket Entries.

June 25-69	Filed record of proceedings dated 6/13/69.
June 26-69	Filed ANSWER of Deft Goldberg.
June 26-69	Filed affidavit of J. Lee Rankin.
June 27-69	Filed Memorandum of law on behalf of Deft Wyman.
June 27-69	Filed ANSWER of Deft Wyman.
June 27-69	Filed Defts affidavit in opposition to Pltffs application for a permanent injunction restraining and enjoining the city and state.
June 27-69	Filed Deft Wymans notice of motion for an order vacating the temporary restraining order.
July 2-69	Filed Memorandum of Pltff in response to Judge Tenneys request for information.
June 30-69	Before Feinberg, CJ. McLean J. Tenney J.—Oral argument held and concluded (See Transcript) Dec. Res.
July 14-69	Filed Affidavit of Nancy Duff Levy of service of pltfs'. letter to Judge Feinberg, on 7/2/69, etc.
Aug. 18-69	Filed OPINION #36102. Three Judge Court—Feinberg, U.S.C.J., Tenney, D.J. and McLean, D.J. Plaintiffs' motion for a permanent injunction is granted. SUBMIT ORDER, on notice, in conformity herewith. (Feinberg and Tenney). I would deny the motion and dismiss the action. (McLean, J.) (mailed).
Aug. 28-69	Filed Record of Proceedings before 3-judge court, of June 30, 1969.

Docket Entries.

Oct. 1-69	Filed Order for permanent injunction. Ordered that defendants, their successors, etc. are enjoined by reason of their refusal to freely consent to the entry of welfare officials into their dwelling places without a valid Search Warrant. McLean, J. signed by Feinberg, C.J., Tenney, D.J. One judge McLean, Dissenting.
Oct. 24-69	Filed Notice of Appeal by deft. George K. Wyman to the Supreme Court.

Complaint.

IN THE

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

BARBARA JAMES, individually and on behalf of her minor child Maurice James, and on behalf of all other persons similarly situated,

Plaintiffs,

VS.

JACK R. GOLDBERG, individually and as Commissioner of the Department of Social Services of the City of New York; GEORGE K. WYMAN, individually and as Commissioner of the State of New York Department of Social Services,

Defendants.

I.

1. This is an action for injunctive and declaratory relief under Rule 57 of the Federal Rules of Civil Procedure authorized by Title 42 U.S.C. § 1983 to secure rights, privileges, and immunities established by the Fourteenth Amendment to the Constitution of the United States and by Titles IV and XVI of the Social Security Act, Title 42 U.S.C. § 601 *et seq.* and 1381 *et seq.*, and regulations promulgated thereunder. By this action plaintiffs seek to prevent the termination of public assistance grants upon the grounds that such termination constitutes a violation of (1) Plaintiffs' right to be secure in their home from unreasonable searches of and (2) Plaintiffs' right to privacy.

II *Jurisdiction*

2. Jurisdiction is conferred in this Court by Title 28 U.S.C. § 1343(3) and (4) providing for original jurisdiction of this Court in suits authorized by Title 42 U.S.C. § 1983; and by Title 28 U.S.C. §§ 2201 and 2202 relating to declaratory judgments and Title 28 U.S.C. § 1331 relating to claims arising under federal law.

3. Plaintiffs respectfully request that a three-judge district court be convened. Such a court is required under 28 U.S.C. § 2281 because Plaintiffs seek to enjoin the enforcement of regulations of the New York State Department of Social Services of statewide application, Sections 351.10 and 351.21 of Title 18 of the New York Code of Rules and Regulations (hereinafter NYCRR), promulgated pursuant to the authority conferred by State statute, Section 134 of the Social Services Law, upon the ground that such regulations contravene the United States Constitution.

III *Plaintiffs*

4. Plaintiff Barbara James, individually and on behalf of her minor child, Maurice James, is an adult citizen of the United States, residing in New York State, and is and was at all times herein relevant the mother of a needy child. Plaintiffs have no income, resources, or source of support other than Public Assistance benefits which until June 2, 1969 they have received from the New York City Department of Social Services under the New York State program of Aid to Families with Dependent Children (AFDC). This program is administered and supervised by Defendants under color of laws, statutes, ordinances,

regulations, customs and usages of or pertaining to the State of New York.

5. Plaintiffs bring this action on behalf of themselves and all others similarly situated, pursuant to Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. Plaintiffs are members of a class composed of needy parents and their dependent children residing in the State of New York and eligible to receive aid under the New York program of Aid to Families with Dependent Children, but for the imposition of the requirement challenged herein that applicants and recipients of public assistance permit caseworkers and other officials of the Department of Social Services to enter their homes without a valid search warrant and without the freely-given consent of said recipients. Members of this class have either been denied assistance by imposition of the "home visit" requirement as a condition of receipt of said assistance, despite the fact that this requirement denies applicants and recipients their right to be free from unreasonable search and seizure and their right of privacy; or have permitted entry to their homes under compulsion of threatened termination of benefits. The class is so numerous as to make joinder of all its members impracticable. There are questions of law and fact common to the class. The claims of the named Plaintiff are typical of the claims of the class. The named Plaintiff will fairly and adequately protect the interests of the class.

6. New York, like all other states, cooperates with the federal government in extending public assistance to needy persons, as authorized in the Social Security Act of 1935. Pursuant to that legislation, New York receives grants-in-aid from the federal government covering half of its cost in providing aid to the aged (OAA), the blind (AB),

the permanently and totally disabled (APTD), and families with dependent children (AFDC), under a New York "state plan", consisting of state statutes and regulations approved by the United States Department of Health, Education and Welfare.

IV *Defendants*

7. Defendant JACK R. GOLDBERG is the Commissioner of the Department of Social Services of the City of New York. He is responsible under the Social Services Law of the State of New York for the administration of state programs of public assistance within the City of New York.

8. Defendant GEORGE K. WYMAN is the Commissioner of the Department of Social Services of the State of New York. He is chief executive and administrative officer of that Department and has general responsibility for the conduct of all state and local Welfare officials, pursuant to the Social Services Law.

V. *Statement of Claim*

9. On May 8, 1969, Adreanne Finnell, a caseworker in the New York City Department of Social Services, wrote to Plaintiff requesting an appointment to visit her on May 14, 1969. Plaintiff immediately contacted Adreanne Finnell and informed her that she would be willing to supply any information that was reasonable and relevant to her need for public assistance. Plaintiff insisted that any discussions or contacts take place not in her home, but in the office of the Social Services Department. The caseworker explained that Department regulations (§ 175 of the Poli-

cies Governing the Administration of Public Assistance) required that she visit the client in her home, and that refusal by the client to permit a home visit would result in termination of her welfare benefits. Plaintiff continued to refuse the caseworker entry into her home on the grounds that her right to privacy and her constitutional protection against illegal search would be thereby forfeited.

10. On previous visits to the homes of Plaintiffs and, on information and belief, of all other persons similarly situated, questions concerning personal relationships, beliefs and behavior are raised and pressed which are unnecessary for a determination of continuing eligibility.

11. On May 13, 1969, the New York City Department of Social Services sent Plaintiff a notice of intent to discontinue assistance based on Plaintiff's refusal to permit a home visit by her caseworker. (See Annexed hereto as Exhibit "A".) A "prior review" hearing (a hearing prior to termination of benefits) was scheduled and completed on May 27, 1969. At the time of this hearing Plaintiff and her attorney reiterated Plaintiff's desire to cooperate with her caseworker's request for information about Plaintiff's present needs, so long as such discussions were not conducted in Plaintiff's home. However, the Department of Social Services' decision after hearing upheld the caseworker and directed termination of benefits on June 2, 1969, based on Plaintiff's refusal to allow the caseworker entrance into her home. (Decision annexed hereto as Exhibit "B".)

12. The policies and practices of the Defendants pertaining to home visits deprive Plaintiffs and all other persons similarly situated of rights, privileges and immunities secured by the Constitution of the United States, as amended.

More particularly, Defendants, pursuant to New York State regulations, 18 N.Y.C.R.R. §§ 351.10 and 351.21 (as implemented locally by § 175 of the New York City Policies Governing the Administration of Public Assistance), have:

(a) Terminated public assistance benefits because Plaintiffs and other persons similarly situated have refused to allow caseworkers to enter their homes and interrogate plaintiffs about matters that are personal and private, in violation of plaintiffs right to be free from unreasonable searches under the Fourth and Fourteenth Amendments to the Constitution of the United States, and further in violation of their right to privacy under the First, Fourth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States, and

(b) Entered the home of plaintiffs and all other persons similarly situated, and conducted interrogations about matters that are personal and private, through consent given under threat of termination of welfare aid necessary for the survival of the family and to which the family is entitled, thereby conditioning the continued receipt of such aid upon the surrender of plaintiffs' rights to be free from unreasonable searches and to privacy, as set forth above.

13. Defendants' termination of Plaintiffs' public assistance grant threatens to cause them extreme hardship, suffering and anxiety, including inadequate food, clothing and shelter. Plaintiffs have suffered and will continue to suffer severe and irreparable injury to their health, well-being and family life as a result of this action until such time as this action is declared unlawful.

14. Plaintiff need not continue to exhaust her administrative remedies in this matter under 42 U.S.C. 1983.

Plaintiffs have no adequate remedy at law and defendants will continue to cause, and threaten to cause, irreparable injury unless enjoined forthwith.

VI. *Prayer for Relief*

WHEREFORE, Plaintiffs respectfully pray on behalf of themselves and those similarly situated that this Court:

1) Assume jurisdiction of this cause and convene a three-judge court pursuant to 28 U.S.C. 2281 and 2284 to determine the controversy;

2) Issue a temporary restraining order and preliminary injunction pursuant to 28 U.S.C. 2284, ordering the Defendants to reinstate the Plaintiffs to the assistance to which Plaintiffs and the class they represent are entitled and ordering Defendants to cease the conduct herein described pending the determination of the cause;

3) Enter a declaratory judgment pursuant to 28 U.S.C. 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure:

(a) Declaring that the policies and practices complained of herein deprive the Plaintiff and others similarly situated of rights, privileges, and immunities secured by the First, Third, Fourth, Fifth, Sixth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States and by Titles IV and XVI of the Social Security Act, 42 U.S.C. § 601 *et seq.* and § 1381 *et seq.*

(b) Declaring that employees or officials of the New York City Department of Social Services may not:

(1) discontinue, or reduce financial assistance, or otherwise interfere with the receipt of such assistance, because of a recipient's refusal to consent to entry into his or her home without a valid search warrant;

(2) threaten, explicitly, or implicitly, to take such action because of such a refusal; or

(3) enter the home of a recipient of public assistance except under a valid search warrant or on the basis of the consent of the recipient freely-given after the employee or official has clearly stated to the recipient that none of the afore-mentioned actions can be taken because of a refusal to consent.

(c) Declaring that no employee, agent, or official of the New York City Department of Social Services may enter and search any rooms within the home of a recipient of public assistance or touch and examine any objects therein except under a valid search warrant or on the basis of a consent freely given after a clear statement of the recipient's right to withhold consent without suffering loss or diminution of benefits.

4. Enter a permanent injunction restraining the Defendants, their successors in office, agents, and employees from:

(a) Entering into the dwelling places of Plaintiff and others similarly situated, without obtaining a valid Search Warrant issued upon probable cause or on the basis of consent of the recipient freely given after the employee or welfare official has clearly stated to the recipient that failure to give such consent will not result in discontinuance or reduction of financial assistance, or criminal prosecution.

(b) Interrogating or questioning an applicant for or recipient of public assistance regarding activities not demonstrably relevant to issues of eligibility.

5. Allow Plaintiff her costs herein, and grant her and all others similarly situated such additional or alternative relief as the Court may deem equitable, just and appropriate.

DAVID GILMAN

DAVID GILMAN
JONATHAN WEISS
MFY Legal Services, Inc.
759 Tenth Avenue
New York, New York

LEE A. ALBERT
NANCY DUFF LEVY
HENRY A. FREEDMAN
Center on Social Welfare Policy
and Law
401 West 117 Street
New York, New York 10027

(Verified by Barbara James on June 6, 1969.)

Exhibit A, Annexed to Complaint.

[SEAL]
THE CITY OF NEW YORK

DEPARTMENT OF SOCIAL SERVICES
Center: Kingsbridge
Address: 248 East 161 Street
Bronx, New York 10451

NOTICE OF INTENT TO SUSPEND OR DISCONTINUE PUBLIC ASSISTANCE

(*Prepare in Triplicate*)

Mrs. Barbara James
90 West 164 Street #2B
Bronx, New York 10452

ADC 2604949
Case Number

This is to advise you that this Department intends to ☐ SUSPEND ☒ DISCONTINUE your public assistance grant on May 20, 1969, for the following reasons:

Failure to comply with Department of Social Service policy (Refusal to allow a home visit for Recertification purposes).

If you feel that your public assistance grant should not be suspended or discontinued you may request a review of your record by a Review Officer by replying on or before May 20, 1969. In such case, a notice of appointment will be sent to you requesting your appearance at a designated time and place, in order to review your case with you and afford you an opportunity to present written and/or oral evidence and to state reasons demonstrating why your grant should not be suspended or discontinued. At this

review, you have the right to appear with an attorney or any representative of your own choosing.

Unit Supervisor: G. Hayward

Date: May 13, 1969

Caseload No.: 07-4

If you wish a review, please mark an X in Box No. 1, below. If you do not wish a review, please mark an X in Box No. 2, below. If you fail to reply, we will assume that you agree with the action the Department proposes to take.

Box No. 1: ☐ I REQUEST A REVIEW

Box No. 2: ☐ I DO NOT REQUEST A REVIEW

Please return a copy of this letter in the enclosed self-addressed envelope and keep the other copy of this letter for your records.

If, after this review, you are still dissatisfied with the decision given you, you may request a Fair Hearing, in writing or orally, by communicating with the State Department of Social Services at 270 Broadway, New York, N. Y. 10007, Telephone Number 488-6550.

Enclosed: self-addressed return envelope.

Signature ..... Date .....

Exhibit B, Annexed to Complaint.

MEMORANDUM

THE CITY OF NEW YORK
DEPARTMENT OF SOCIAL SERVICES

Date: June 2, 1969

To: Miss Catherine Hillery, Director
Kingsbridge Social Service Center

FROM: Frank Leonard, Administrator
Review Section

SUBJECT: REVIEW OF PROPOSED CASE CLOSING

On 5/27/69 a Review was held at 271 Church Street before Frank Leonard, Administrator of the Review Section. Present at the Review were the followng: Mrs. Barbara James, the client, and her son, Maurice; Mr. David Gilman, the client's attorney; Mrs. Shirley Watson, a representative of the National Welfare Rights Organization; Mr. Arthur Schiff; and the Supervisor and caseworker from the Kingsbridge Center.

The Center proposed to discontinue assistance for the following reason, stated on the form M3C:

> "Failure to comply with Department of Social Service policy (Refusal to allow a home visit for Recertification purposes)."

The following section from the Manual of *Policies Governing the Administration of Public Assistance* was read at the Review:

> Mandatory visits must be made in accordance with law which requires that persons be visited at least once

every three months if they are receiving Home Relief, Veteran Assistance, or Aid to Dependent Children, and at least once every six months if they are receiving Old Age Assistance, Aid to the Disabled, or Assistance to the Blind. (Section 175, page 78)

Mrs. James receives Aid to Dependent Children.

According to this section of the Manual, four visits per year would be required to a family in receipt of Aid to Dependent Children. In actual practice, the New York City Department of Social Services, with the permission of the State Department of Social Services, in some cases has permitted the sending of form letters in place of two of these yearly visits, with the remaining two yearly visits, one every six months, being retained.

Although section 175 of the Manual does not specifically say that the "mandatory visits" referred to must be made in the home, it is the Department of Social Services' policy that the visits every six months must be made in the home.

Mr. Gilman stated that his client was willing to cooperate with the Center in every way and was willing to provide any information that might be requested. He stated that his client was willing to permit "visits" by workers from the Center at any location designated, with the exception of the client's home. Mr. Gilman contended that to permit visits in the client's home would jeopardize the client's right to the privacy of her home.

Mr. Gilman requested to know what specific section of City or State rules, regulations or laws provided for such mandatory home visits. However, it is not incumbent upon the Review Section to cite the City or State rules, regulations or laws upon which Department of Social Services policy is based. The Review Section merely determines whether the closing of a particular case is in accordance

with the policy of the Department of Social Services. It is assumed that the Department's policy is derived from City or State rules, regulations or laws.

The home visit which Mrs. James refuses to permit is for the purpose of determining if there are any changes in her situation that might affect her eligibility to continue to receive Public Assistance, or that might affect the amount of such assistance, and to see if there are any social services which the Department of Social Services can provide to the family.

Such a visit is required by Department policy. The closing of this case because of the client's refusal to permit such a visit is in accordance with the policies of the Department of Social Services.

DECISION: The action of the Center is affirmed.

Affidavit of Barbara James, Sworn to June 6, 1969.

(Printed at pp. 24-25.)

Order to Show Cause.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

Let defendants show cause, in Room 506 of the United States Courthouse, Foley Square, New York, New York, on the 10th day of June, 1969 at 10:00 a.m., or as soon thereafter as counsel may be heard, why an order should not issue or the court take such other action as shall grant the Plaintiffs herein the following relief:

A preliminary and permanent injunction restraining and enjoining the defendants, their agents, employees and attorneys and all persons in active concert and participation with them from:

(1) Entering into the dwelling places of Plaintiff and others similarly situated, without obtaining a valid search warrant issued upon probable cause or on the basis of consent of the recipient freely given after the employee or welfare official has clearly stated to the recipient that failure to give such consent will not result in discontinuance or reduction of financial assistance or criminal prosecution.

(2) The convening of a statutory court of three judges for the purpose of hearing and determining this application for a preliminary and permanent injunction and this cause, in accordance with the provisions of Title 28 United States Code Section 2281 and 2284.

(3) An order determining that this action may properly proceed as a class action pursuant to Rules 23 (a) and 23 (b) (2) of the Federal Rules of Civil Procedure.

Let the defendants further show cause why a temporary restraining order pursuant to Title 28 United States Code Section 2284 should not issue restraining the defendants, their agents, employees and attorneys and all persons in active concert and participation with them from

(1) discontinuing or reducing the named Plaintiff's public assistance grant because of her refusal to consent to a welfare official's entry into her home without a valid search warrant pending the hearing and determination of Plaintiff's motion for a preliminary injunction by a three-judge court convened pursuant to Title 28 United States Code 2281 and 2284.

The named Plaintiffs seek this temporary restraining order, and all those similarly situated seek a preliminary injunction and other relief on the grounds that:

1) They are each suffering, or threatened with imminent suffering of, irreparable injury in that they are without means to provide for themselves the basic necessities of food, clothing and shelter and will continue to suffer even greater deprivation until they are restored to full public assistance,

2) The issuance of a temporary restraining order for the named Plaintiffs and a preliminary injunction for the Plaintiffs and all those similarly situated will not cause undue inconvenience or loss to the defendants but will prevent irreparable injury to the plaintiffs,

3) The statutes and regulations which require that a caseworker visit a recipient in her home as a continuing

eligibility condition violates plaintiffs right to be free from unreasonable search under the Fourth Amendment to the Constitution of the United States and her right to privacy.

4) Plaintiffs have no adequate remedy at law, as set forth more fully in the verified complaint and the affidavit of Barbara James and David Gilman attached hereto.

It Is Ordered, that service of this Order on defendants on or before 2 P.M. on the 9th day of June, 1969, be deemed sufficient.

Done and ordered at the United States Courthouse Foley Square, New York, New York, this 6th day of June 1969.

Charles Tenney,
United States District Judge.

Affidavit of David Gilman, in Support of Order to Show Cause.

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

DAVID GILMAN, being duly sworn, deposes and says:

1. I reside at 160 West 96th Street, New York, New York 10025.

2. I am an attorney practicing with Mobilization For Youth Legal Services Unit, located at 759 Tenth Avenue, New York, New York.

3. In this capacity I have represented Mrs. Barbara James as her attorney from May 16, 1969, to the present.

4. The major part of my legal representation of Mrs. James has consisted of assisting her in problems she has had with the New York City Department of Social Services.

5. On May 8, 1969, Mrs. James received a letter from her caseworker, Adreanne Fennell, requesting an appointment to visit her on May 14, 1969. Mrs. James contacted Adreanne Fennell and informed her that she would be willing to supply any information that was reasonable and relevant to her need for public assistance. Mrs. James stated these discussions could take place in the welfare center, and under no circumstances could the caseworker

visit her in her home. The caseworker explained that Department regulations required that she visit the client in her home to discuss certification, and that refusal by the client to permit a home visit would result in termination of her welfare benefits. Mrs. James continued to deny the caseworker entry into her home.

6. On May 13, 1969, the New York City Department of Social Services sent Mrs. James a notice of intent to discontinue assistance based on her refusal to permit a home visit by her caseworker.

7. On May 27, 1969, a prior review hearing was held at the Department of Social Services. At this hearing Mrs. James reiterated her desire to cooperate with her caseworker's request for information about her present needs, as long as such discussions were not conducted in Mrs. James' home. The review officer upheld the caseworker's decision to terminate benefits effective June 2, 1969, based on Mrs. James' refusal to allow the caseworker entry into her home, on the grounds that the law requires such a home visit.

8. Mrs. James has at no time refused to cooperate or made herself unavailable to Defendants for interviews or discussions concerning her eligibility for public assistance.

9. Mrs. James' sole contention is that any discussions, interviews or contacts with Departmental personnel may not be conducted in her home.

10. Under relevant constitutional provisions Mrs. James is not required to permit her caseworker entry into her home except upon presentation of a valid search warrant, nor can the Department terminate Mrs. James' assistance benefits because of such refusal.

11. That Mrs James and her family now face serious economic hardship due to the termination of her benefits and will suffer irreparable injury if these benefits are not restored.

12. No prior application for relief sought herein.

(Sworn to by David Gilman, on June 6, 1969.)

Affidavit of Barbara James, in Support of Order to Show Cause.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

BARBARA JAMES, being duly sworn, deposes and says:

1. I am the mother of Maurice James and reside with him at 90 West 164th Street, Apartment 2B in the City and State of New York.

2. I have been on Welfare for the past two years.

3. On May 8, 1969, my caseworker Adreanne Fennell wrote and told me that she planned to visit me at home on May 14, 1969. I called her the next day and asked her why she had to visit me in my home. She told me that she was required to make a home visit in order to recertify my case. I told her that I would supply her with any infor-

mation that she needed, but that I did not want her in my house. I told her I would come down to the Welfare center if she wanted. The caseworker Adreanne Fennell explained that she must visit me at home, and if I refused to allow her in she would be forced to terminate my case.

4. On May 13, 1969, I received a letter from the Welfare Department telling me that they intended to cut me off Welfare. They told me I could request a review before termination.

5. I requested a prior review and it was held on May 27, 1969. I told the review officer that I would cooperate and give any information that the Welfare people needed to know, but I did not want them in my house. The caseworker told the review officer that she was required by law to conduct the recertification interview in my home.

6. On June 2, 1969, the review officer decided that the local center was correct in terminating my assistance because I refused to allow the caseworker into my home. I have now been cut off Welfare, and I don't know how I will be able to pay my rent and take care of my child.

(Sworn to by Barbara James on June 6, 1969.)

Affidavit of Brenda Soloff, in Opposition to Order to Show Cause.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

BRENDA SOLOFF, being duly sworn, deposes and says:

I am an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for Defendant Wyman herein. I make this affidavit in opposition to plaintiffs' application for temporary restraining order and for the convening of a three-judge court.

As is more fully set forth in the accompanying memorandum of law plaintiffs show neither irreparable damage entitling them to a temporary restraining order nor a question of substance requiring the convening of a three-judge court. There is no indication in the complaint or affidavits that if plaintiffs comply with the home visit rule that they will suffer irreparable damage. This is made even more apparent by the fact that the attorneys who appeared in this case commenced a similar action in this Court in 1967 and have not pursued it. *Synester Bradley* v. *Ginsberg*, 67 Civ. 3047. That case too purports to be a class action.

Finally, as the accompanying memorandum of law indicates, the question is so insubstantial that neither injunctive relief nor a three-judge court is required.

WHEREFORE, plaintiffs' applications for temporary restraining order and for a three-judge court should be denied and the complaint dismissed.

(Sworn to by Brenda Soloff on June 13, 1969.)

Opinion Convening Three-Judge Court

TENNEY, J.

Plaintiff, individually and on behalf of her minor child and all other persons similarly situated, moves this Court for an order: a) convening a district court of three judges pursuant to 28 U.S.C. §§ 2281, 2284 for the purpose of hearing and determining her application for a permanent injunction restraining and enjoining the defendants from enforcing certain New York State Department of Social Services Regulations on the grounds that they violate the First, Fourth, Fifth, Sixth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States; b) granting a temporary restraining order pursuant to 28 U.S.C. § 2284(3) restraining the defendants from discontinuing, reducing or denying public assistance grants to all persons who object to the continued enforcement of the regulations challenged herein; and c) determining that this action may properly proceed as a class action pursuant to Fed. R. Civ. P. 23(a), 23(b)(2).

Plaintiff has been a recipient of Aid to Dependent Children benefits (hereinafter referred to as "ADC") for the past two years. On May 8, 1969, she received a letter from her caseworker requesting an appointment to visit plaintiff in her home on May 14, 1969. In reply, plaintiff explained that while she was willing to discuss issues and supply any information reasonable and relevant to her continued receipt of public assistance, under no circumstances could the caseworker make a home visit. The caseworker explained that Department of Social Services Regulations require that she visit plaintiff in her home to discuss recertification of her case, and that refusal by plaintiff to permit such a home visit would result in the termination of her ADC benefits. While reiterating her willingness to provide whatever information was requested at the offices of the Department of Social Services, plain-

tiff continued to deny her caseworker entry into her home.

On May 13, 1969, the New York City Department of Social Services sent plaintiff a notice of intent to discontinue her ADC benefits based upon her refusal to permit such a home visit. On May 27, 1969, a hearing held prior to the termination of public assistance was conducted at the Department of Social Services. Thereat, plaintiff again reiterated her desire to supply information relevant to her present needs, but declined to discuss such needs in her home. The Department's review officer, after determining that such home visits were required by law, upheld the caseworker's decision to terminate benefits effective June 2, 1969.

In reaching this decision, the review officer relied upon Section 175 of the Policies Governing the Administration of Public Assistance, which, in pertinent part, provides:

> "Mandatory visits must be made in accordance with law that requires that persons be visited at least once every three months if they are receiving Home Relief, Veteran's Assistance, or Aid to Dependent Children, and at least once every six months if they are receiving Old Age Assistance, Aid to the Disabled or Assistance to the Blind."

This Section was promulgated in accordance with Section 134 of the New York State Social Welfare Law,[1] and Sections 351.10, 351.21 of Title 18 of the New York Code of Rules and Regulations.[2]

It is well settled that the convening of a three-judge district court pursuant to 28 U.S.C. § 2281 is not required where the claim involved is "obviously without merit", where the constitutional questions presented are "insubstantial" in that prior court decisions have clearly and unequivocally foreclosed the matter in dispute or where the suit seeks merely to enjoin local officers seeking to

enforce statutes of local as opposed to general or statewide application. 33 Brooklyn L. Rev. 157, 159-60 (1966). I find that the issues presented herein are neither insubstantial nor obviously without merit, and that the regulations sought to be enjoined are of statewide applicability. Without intimating any opinion on the merits of the within action, it seems abundantly clear that the recent decisions in *Thompson* v. *Shapiro*, 270 F. Supp. 331 (D. Conn. 1967), *aff'd* —— U. S. ——, 37 U.S.L.W. 4333 (1969); *King* v. *Smith*, 392 U. S. 309 (1968); *Griswold* v. *Connecticut*, 381 U. S. 479 (1965); *McDonald* v. *United States*, 335 U. S. 451 (1948) and *Parrish* v. *Civil Service Comm'n of the County of Alameda*, 66 Cal. 2d 260, 425 P. 2d 223, 57 Cal. Rptr. 623 (1967) necessitate the convening of a three-judge district court to consider the substantial constitutional questions relating both to the Fourth Amendment's stricture against unreasonable searches and seizures and to the penumbral right of privacy and repose raised herein.

Pursuant to 28 U.S.C. § 2284(3), this Court "may at any time, grant a temporary restraining order to prevent irreparable damage." Based upon plaintiff's affidavit of June 6, 1969, such an order would seem appropriate at the outset of this action to prevent the termination of ADC benefits which ensure at least a minimal subsistence level of life and health for plaintiff and her child. *Ramos* v. *Health & Social Services Bd.*, Civil No. 67-C-329 (E. D. Wis., filed Nov. 7, 1967). Moreover, since the enforcement of the home visit regulation must inevitably cause irreparable injury to all persons who, while receiving public assistance grants are unwilling to consent to the entry of officials of the Department of Social Services into their homes, a restraining order protecting them from the denial or termination of such grants based upon this refusal is equally necessary pending the determination by the full court of plaintiff's application. The harm to plaintiff and

others similarly situated from continued enforcement of the regulations challenged herein is both clear and abundant, while the cost to the State and City is obscure and minimal. *Hernandez* v. *Freeman,* Civil No. 50333 (N. D. Cal., filed Dec. 30, 1968); *Burns* v. *Montgomery,* Case No. 49018 (N. D. Cal., filed April 19, 1968); *Griffin* v. *Bonin,* Civil No. 13,521 (W. D. La., filed March 7, 1968); *Alvardo* v. *Dunn,* Civil No. 12,399 (D. Conn., filed Feb. 14, 1968); *Ramos* v. *Health & Social Services Bd., supra.*

Finally, in that this Court is satisfied that: a) the class which plaintiff seeks to represent is so numerous that joinder of all members is impracticable; b) there are questions of law common to the class; c) the claims of the representative party are typical of the claims of the class; d) the representative party will fairly and adequately protect the interests of the class; and e) the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole, this action may properly proceed as a class action pursuant to Fed. R. Civ. P. 23.

In order to effectuate the terms of this opinion, a temporary restraining order has been entered effective at 4:00 P.M. on June 13, 1969.

So ordered.

Dated: New York, New York, June 13, 1969

CHARLES W. TENNEY
U.S.D.J.

FOOTNOTES

[1] "The public welfare officials responsible . . . for investigating any application for public assistance and care, shall maintain close contact with persons granted public assistance and care. Such persons shall be visited as frequently as is provided by the rules of the board and/or regulations of the department . . . in order that any treatment or service tending to restore such persons to a condition of self support and to relieve the distress may be rendered and in order that assistance or care may be given only in such amount and as long as necessary."

[2] "18 NYCRR 351.10. *Required Home Visits and Contacts.* Social investigation as defined and described . . . shall be made of each application or reapplication for public assistnce or care as the basis for determination of initial eligibility.

a. Determination of initial eligibilty shall include contact with the applicant and at least one home visit which shall be made promptly in accordance with agency policy. . . ."

"18 NYCRR 351.21. *Required Contacts.* Contacts with recipients and collateral sources shall be adequate as to content and frequency and shall include home visits, office interviews, correspondence reports. . . ."

Temporary Restraining Order.

UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF NEW YORK

[SAME TITLE]

Plaintiffs having moved this Court pursuant to Title 28, United States Code, Section 2284(3), for a temporary restraining order restraining Defendants Wyman and Goldberg from discontinuing or reducing public assistance grants to Plaintiff and the class she represents, for refusing to consent to a welfare official's entry into her home without a valid search warrant. This motion having been considered by this Court:

Upon the pleading, affidavits and briefs submitted on behalf of the parties, and the hearings held to date, and upon the finding by this Court that (1) substantial questions have been raised as to the constitutional validity of the State Statute and regulations requiring home visits as a condition for the receipt of public assistance, which require further consideration by a statutory three-judge Court, and (2) Plaintiffs are now suffering irreparable injury when their aid is reduced or discontinued upon their failure to allow the welfare official to enter their homes, it is

ORDERED, ADJUDGED AND DECREED THAT, pending hearing and determination by a statutory three-judge Court of the consitutionality and validity of the State Statute and regulations requiring a home visit as a condition to the continued receipt of public assistance that:

1. Defendants, their successors in office, agents and employees, and all persons in active concert and participation

with them, are hereby restrained from entering into the dwelling places of plaintiffs and other similarly situated, without obtaining a valid Search Warrant issued upon probable cause or on the basis of consent of the recipient freely given after the employee or welfare official has clearly stated to the recipient that failure to give such consent will not result in discontinuance, reduction or denial of welfare assistance or criminal prosecution.

Dated: New York, New York, June 13, 1969.

CHARLES W. TENNEY
U. S. D. J.

Effective 4:00 P.M. June 13, 1969.

CWT.

Affidavit of Archery Delcon.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ARCHERY DELCON, being duly deposed and sworn, says:

1. I reside at 186-16 Ridgedale Street, Queens, New York, and have five children: Patricia, age 16, Wilhelmena, age 13, Ted, age 10, Ned, age 10 and Leroy, age 8.

Affidavit of Archery Delcon.

2. I have been a recipient of public assistance for myself and by family since 1956.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these vists. I often don't know who the caseworker will be because they are changed so often. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse

to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Archery DeLeon on June 18, 1969.)

Affidavit of Hattie Florence.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

HATTIE FLORENCE being duly deposed and sworn, says:

1. I reside at 387 Lenox Avenue, New York, New York and have five children: Arthur, age 12, Amelia, age 9, Anita, age 10, Carlaise, age 5 and Donna, age 8 months.

2. I have been a receipient of public assistance for myself and my family since 1964.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it

would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Hattie Florence, on June 18, 1969.)

Affidavit of Ernestine Cody.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ERNESTINE CODY, being duly deposed and sworn, says:

1. I reside at 607 Willoughby Avenue, Brooklyn, New York, and have two children: Cheryl, age 7 and Gracie, age 4.

2. I have been a recipient of public assistance for myself and my family since 1967.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have

always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for

special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Ernestine Cody, on June 18, 1969.)

Affidavit of Jean Royal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JEAN ROYAL, being duly deposed and sworn, says:

1. I reside at 16 Cornelia Street, Brooklyn, New York and have four children: Evan, age 17, Rolein, age 15, Debra, age 13, and Caroline, age 3.

2. I have been a recipient of public assistance for myself and my family since 1958.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Jean Royal on June 18, 1969.)

Affidavit of Ethel McMillian.

UNITER STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ETHEL MCMILLIAN being duly deposed and sworn, says:

1. I reside at 1556 Saint Marks Avenue, Brooklyn, New York, and have four children: Crystal, age 5, Katrina, age 4, Roneque, age 2 and Henry, 10 months.

2. I have been a recipient of public assistance for myself and my family since 1963.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of

my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Ethel McMillian on June 18, 1969.)

Affidavit of Deloris Macklin.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

DELORIS MACKLIN, being duly deposed and sworn, says:

1. I reside at 1248 Washington Avenue, Bronx, New York, and have four children: Remay, age 9, Charlie, age 7, Shelia, age 2½, and James, age 5.

2. I have been a recipient of public assistance for myself and my family since 1964.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of my company and sometimes he even asks questions of the people who are visiting me.

Affidavit of Deloris Macklin.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Deloris Macklin on June 18, 1969.)

Affidavit of Mattie West.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MATTIE WEST, being duly deposed and sworn, says:

1. I reside at 963 Washington Avenue, Bronx, New York and have five children: Caroline, age 10, Gary, age 9, Kettey, age 4, Gearth, age 6 and Amend, age 2.

2. I have been a recipient of public assistance for myself and my family since 1967.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of

my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Mattie West on June 18, 1969.)

Affidavit of Barbara Belcher.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

BARBARA BELCHER, being duly deposed and sworn, says:

1. I reside at 117-19 142nd Street, Ozone Park, Queens, New York and have six children: Eric, age 8, Kevin, age 7, Michelle, age 6, Crug, age 5, Karen, age 4, and Debora, age 3.

2. I have been a recipient of public assistance for myself and my family since 1964.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have com-

pany. Sometimes the worker interviews me in front of my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Barbara Belcher, on June 18, 1969.)

Affidavit of Odessa Singleton.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ODESSA SINGLETON, being duly deposed and sworn, says:

1. I reside at 172-53 125th Avenue, Springfield Gardens, Queens, New York and have six children: Ronald, age 9, Michael, age 8, Gregory, age 7, Marc, age 5½, Jonathan, age 4, and Nicole, age 21 months.

2. I have been a recipient of public assistance for myself and my family since 1964.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of

my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Odessa Singleton on June 18, 1969.)

Affidavit of Alberta Miller.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

ALBERTA MILLER, being duly deposed and sworn, says:

1. I reside at 33 Cranite Street, Brooklyn, New York, and have four children: Sheena, age 12, Tezell, age 9, Sharlena, age 6 and James, age 5.

2. I have been a recipient of public assistance for myself and my family since 1959.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him a[illegible] can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of my com-

pany and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and recent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Alberta Miller on June 18, 1969.)

Affidavit of Jacqueline Lacey.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JACQUELINE LACEY, being duly deposed and sworn, says:

1. I reside at 141-11 Foch Boulevard, Queens, New York and have eight children: Bennie, age 13, Kevin, age 12, Donald, age 10, Ronald, age 10, Ronita, age 8, Jack, age 6, Joseph, age 5, and Teear, age 1.

2. I have been a recipient of public assistance for myself and my family since 1964.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to in that time. It's very embarrassing to me if the caseworker comes when I have company.

Sometimes the worker interviews me in front of my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especially when the questions they ask are personal ones. I'm resentful and embarrassed when a worker look around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Jacqueline Lacey on June 18, 1969.)

Affidavit of Margie Miller.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

MARGIE MILLER being deposed and sworn, says:

1. I reside at 825 Columbus Avenue, New York, New York and have five children: Kevin, age 9 months, Kim, age 8, Karen, age 8, Kenneth, age 7, and Igle, age 5.

2. I have been a recipient of public assistance for myself and my family since 1967.

3. Since I have been receiving public assistance, caseworkers have regularly visited me in my home. I have always let them come in and have discussed with them my eligibility, my needs and whatever else they have wanted to talk about.

4. I never know just what will happen or what will be talked about during these visits. I often don't know who the caseworker will be because they are changed so often.

5. Most often I don't know the caseworker is coming until he knocks on the door. When he comes unexpectedly, I have to drop what I'm doing to talk to him and can't do the things I planned to do in that time. It's very embarrassing to me if the caseworker comes when I have company. Sometimes the worker interviews me in front of my company and sometimes he even asks questions of the people who are visiting me.

6. The caseworker often asks questions in front of my children about things I'd rather not talk about with my children there. Sometimes he asks very personal questions that I'd rather not answer at all but especially don't want to answer in front of my children.

7. I don't like to have caseworkers in my house and resent having to talk to them in front of my children or in front of visitors especally when the questions they ask are personal ones. I'm resentful and embarrassed when a worker looks around my house or asks questions of my children or of people visiting me.

8. I let the caseworker in and answer his questions because I feel I have no choice. I am afraid that if I refuse to let him in my assistance might be cut off. I am also afraid that if I refused to let a caseworker in it would make him angry. I cannot afford to have my caseworker angry at me because I am so dependent on him. He is the only contact I have with the Welfare Department and he is the person who can approve or disapprove my requests for special grants to buy the things my family needs and my requests for other things like higher rent to pay for a better apartment. I must do what the caseworker asks. I am fearful that if I don't let the caseworker into my home my welfare can be terminated or reduced.

(Sworn to by Margie Miller on June 18, 1969.)

Defendant Goldberg's Answer.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

Defendant, JACK R. GOLDBERG, by his attorney J. LEE RANKIN, Corporation Counsel, for his answer to the complaint herein:

FIRST: Denies the allegations contained in the paragraph of the complaint marked "1" except that plaintiffs are allegedly seeking relief under Rule 57 of the Federal Rules of Civil Procedure authorized by Title 42 U.S.C. § 1983.

SECOND: Denies the allegations contained in the paragraph of the complaint marked "2" and respectfully refer the court to the section quoted therein for the full text and legal effect thereof.

THIRD: Denies the allegations contained in the paragraph of the complaint marked "3" except that plaintiffs are seeking the convening of a three judge district court.

FOURTH: Denies any knowledge or information sufficient to form a belief as to the allegations contained in the paragraph of the complaint marked "4" except that the AFDC program is administered and supervised by Defendants and that plaintiff Barbara James has received Public Assistance in the past.

Defendant Goldberg's Answer.

FIFTH: Denies the allegations contained in the paragraph of the complaint marked "5" except that plaintiffs seek to make this a class action.

SIXTH: Denies the allegations contained in the paragraphs of the complaint marked "10", "12", "13" and "14".

AS AND FOR A FIRST AFFIRMATIVE DEFENSE DEFENDANT, JACK R. GOLDBERG RESPECTFULLY ALLEGES:

SEVENTH: The complaint fails to state a claim upon which relief can be granted.

WHEREFORE, the defendant, Goldberg, respectfully prays for a judgment dismissing the complaint.

J. LEE RANKIN,
Corporation Counsel,
Attorney for Defendant Goldberg.
Office & P. O. Address:
Municipal Building,
New York, New York.

By: LEONARD BERNIKOW,
Assistant Corporation Counsel.
Tel. No. 566-2192

New York, N. Y., June 26, 1969.

Affidavit of Jack R. Goldberg.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

JACK R. GOLDBERG, being duly sworn, deposes and says:

1. That I am the Commissioner of Social Services of the City of New York, and that my office is located at 250 Church Street, New York, New York.

2. That as Commissioner I am responsible for the administration of all public assistance and care within the City, in accordance with the provisions of the Social Services Law, rules of the State Board of Social Welfare, and regulations of the State Department of Social Services.

3. That plaintiff and her child are recipients of Aid to Dependent Children, and that Section 350 subdivision 3 of the Social Services Law requires that supervisory visits shall be made to the homes of such recipients in accordance with rules of the Board and regulations of the Department.

4. That the State Department of Social Services requires home visits in connection with initial determination of eligibility for public assistance (18 NYCRR § 351.10) and investigation of continuing eligibility (18 NYCRR § 351.21), and that the home situation in an ADC case be

one in which the physical, mental and moral well-being of the children in the family is safeguarded.

5. That in accordance with the Social Services Law and regulations and policy guidelines of the State Department of Social Services, investigations of eligibility are limited to factors reasonably necessary to insure eligibility. Caseworkers are instructed not to enter a home of an applicant or recipient by force, under false pretenses, or without permission, and not to make a search of the home by looking into closets and drawers.

(Sworn to by Jack R. Goldberg, as Commissioner of Social Services of the City of New York on June 25, 1969.)

Affidavit of Leonard Bernikow.

IN THE

UNITED STATES DISTRICT COURT,

FOR THE SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF NEW YORK } ss.:

LEONARD BERNIKOW, being duly sworn, deposes and says:

1. I am an assistant corporation counsel in the office of J. LEE RANKIN, Corporation Counsel of the City of New York.

2. I have been assigned to the defense of the above captioned matter on behalf of the defendant Jack R. Goldberg.

3. I was first notified, and only by accident, of the dates on which oral argument was to take place before the three judge bench and when papers had to be filed, on June 23, 1969. I was further informed that all papers had to be filed on June 26, 1969. Due to the relatively short time and the press of other important matters, I have been unable to file a brief.

4. Accordingly, I would ask leave of this Court to rely on the brief submitted by the Attorney General which I feel covers the main issues raised by this action.

(Sworn to by Leonard Bernikow on June 26, 1969.)

Defendant Wyman's Answer.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

The defendant George K. Wyman, Commissioner of the State of New York Department of Social Services, by his attorney, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, answers the complaint as follows:

FIRST DEFENSE

The defendant Wyman denies each and every allegation contained in the complaint except:

1. Denies knowledge or information sufficient to form a belief as to the allegations of the paragraph numbered "1" except admits that plaintiffs seek injunctive and declaratory relief under Rule 57 of the Federal Rules of Civil Procedure authorized by Title 42 U.S.C. § 1983.
2. Denies so much of the paragraph numbered "2" as alleges that the sections cited confer jurisdiction of this case on this Court.
3. Denies the allegations of the paragraph numbered "3" except insofar as it alleges that plaintiffs seek the convening of a three-judge district court.
4. Admits so much of the paragraph numbered "4" as alleges that the defendants administer the New York State program of Aid to Families with Dependent Children and that at some relevant times

plaintiffs were receiving public assistance but denies any implication that plaintiffs were at all times entitled to such assistance and denies knowledge or information sufficient to form a belief as to the resources of plaintiffs.

5. Denies the allegation of the paragraph numbered "5" except admits that plaintiffs seek to prosecute this case as a class action.

6. Admits the allegations of the paragraphs numbered "6", "7" and "8" except respectfully refers the Court to the relevant statutes for their meaning and legal effect and for the scope and the duties of the named defendants.

7. Denies the allegations of the paragraph numbered "9" except admits that a letter was sent to plaintiff requesting an appointment on the date recited and that such a visit was refused.

8. Denies the allegations of the paragraph numbered "10".

9. Admits the allegations of the paragraph numbered "11".

10. Denies the allegations of the paragraphs numbered "12", "13", and "14".

SECOND DEFENSE

The complaint fails to state a claim upon which relief against the defendant Wyman can be granted because the practices and policies of the defendant Wyman are in all respects in accordance with the requirements of federal law and regulations.

THIRD DEFENSE

The complaint fails to state a claim upon which relief can be granted against the defendant Wyman because the policies and practices of the defendant Wyman are explicitly designed to protect the constitutional rights of welfare applicants and recipients.

1. It is the explicit policy of the defendant Wyman that all investigations into eligibility or continuing eligibility shall be conducted by lawful means without infringing upon the individual's civil rights.
2. It is the explicit policy of the defendant Wyman that under no circumstances shall force, threat of force or false statements be used to obtain entry into the home of an applicant or recipient or to obtain evidence of any nature.
3. It is the explicit policy of the defendant Wyman that all investigations must be conducted in a manner that will not violate the applicant's or recipient's right of privacy or dignity, or harass him, or violate his constitutional rights.

FOURTH DEFENSE

The investigatory practices and policies authorized by the defendant Wyman are based upon federal policy requirements, are reasonable and necessary for the sound administration of the welfare system and are not violative of any statutory or constitutional rights of applicants for or recipients of welfare assistance.

1. Federal and state law require that assistance be given to those who seek it and establish that they qualify for it.

2. It is the responsibility of the local agency to ascertain the need for assistance as well as for continuing eligibility.

3. The primary source of information regarding eligibility must be the applicant or recipient.

4. Both state and federal law impose a continuing obligation upon a recipient to provide the information necessary to verify his continuing eligibility and needs.

5. If a recipient is unwilling or reluctant to have the agency help resolve a question of eligibility, the agency may not be able to determine eligibility and would have no recourse but to terminate assistance.

6. Termination of assistance because of inability to verify eligibility is a necessary concomitant to the requirement that assistance is to be given only to those who establish that they qualify.

7. Informing the recipient of the possibility that assistance may be terminated because of inability to verify eligibility is necessary to insure that the recipient understands the possible consequences of his unwillingness to provide verifying information to help resolve a question of eligibility.

8. Decision by the recipient to cooperate in verifying eligibility after being so informed is not the result of coercion or intimidation by the agency and the recipient's cooperation does not result in an unconstitutional invasion of privacy.

FIFTH DEFENSE

Plaintiffs have been accorded full protection of their constitutional rights by defendants as the record of plain-

tiff Barbara James at the New York City Department of Social Services demonstrates. (A copy of the case report is submitted herewith as Exhibit "1").

SIXTH DEFENSE

The complaint fails to state a justiciable controversy or to state a claim on which relief can be granted.

SEVENTH DEFENSE

Plaintiffs have failed to exhaust their administrative remedies.

WHEREFORE, the defendant Wyman respectfully prays for a judgment dismissing the complaint.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendant
Commissioner Wyman
Office & P. O. Address
80 Centre Street
New York, New York 10013

By

.....

BRENDA SOLOFF
Assistant Attorney General
Telephone No. 488-7402

(Verified by Brenda Soloff on June 26, 1969.)

Affidavit of Eleanor Walsh.

[SAME TITLE]

STATE OF NEW YORK }
COUNTY OF ALBANY } ss.:

ELEANOR WALSH being duly sworn deposes and says:

1. She is Deputy Commissioner of the Department of Social Services of the State of New York and head of the Division of Family Services.

2. She makes this affidavit in opposition to plaintiffs application for a permanent injunction restraining and enjoining the city and state commissioners of social services from enforcing rules and regulations of the state department which require local districts to conduct home visits to recipients homes for several reasons.

3. Specifically department regulations 351.10 and 351.21 which were duly adopted by the State Department of Social Services pursuant to Social Services Law § 34 as amended on May 1, 1967 provide that social investigation including home visits shall be made prior to the first grant of assistance and thereafter throughout the recipients eligibility for a variety of reasons and except under certain defined conditions which do not obtain in this case.

4. Home visits are a primary responsibility of the local district with regard to eligibility and case work in the first instance subject to the regulations of the department pursuant to Social Services Law § 134.

5. The state in turn is required to observe federal statutes and regulations in regulating local districts. For

the reasons hereinafter stated reasonable home visits are probably a concomitant of the social services process nevertheless there is authority for such visits in the Social Security Law expressed as follows:

Section 402(a)(14) of the Social Security Act

> "(14) provide for the development and application of a program for such family services, as defined in section 406(d), and child welfare services as defined in section 425, for each child and relative who receives aid to families with dependent children, and each appropriate individual (living in the same home as a relative and child receiving such aid whose needs are taken into account in making the determination under clause (7)), as may be necessary in the light of the particular home conditions and other needs of such child, relative, and individual, in order to assist such child, relative, and individual to attain or retain capacity for self-support and care and in order to maintain and strengthen family life and to foster child development . . ."

The Federal Handbook of Public Assistance Administration implements the Act in section 2200(d)(1)(2)(3), (e)(1)(2) section 2300(a)(e)(3) and there federal regulations in turn are implemented by 18 NYCRR 351.1, 351.2, 351.7, 351.10, 351.21.

It should be noted that these provisions acknowledge home visits as an accepted practice. Indeed the successful administration of a plan of public assistance without home visits is difficult to conceive. Both federal (Federal Handbook § 2300) and state (18 NYCRR 351.1(d)) regulations rule out home visits which violate an individuals privacy, personal dignity or constitutional rights.

6. There are two main reasons for home visits—determination of eligibility and determination of the need for services.

(a) *Determination of eligibility*

In the determination of eligibility financial resources and all factors of eligibility, other than need, must be explored. This includes reviewing any assets, both real and personal which the applicant or recipient owns. Bank accounts, life insurance, stocks and bonds, household furniture and furnishings are a partial listing.

The factors of eligibility other than need, include the age and relationship of children in ADC and age of adults in OAA and AD. A review of birth certificates is required for children and any appropriate evidence of age of adults. A listing of all items which are required could be furnished and applicant could bring them to the agency office. In the event something was omitted, it would entail an additional visit to the office.

Since residence in a district is a requirement, the only way it may be verified that an applicant resides at a particular address is to visit the home.

Generally, a person is more relaxed in his own home and making required contacts in the home assures privacy.

(b) *Need for Services*

The Social Services Law requires public welfare officials to provide assistance (which includes aid, care, support and service) to persons unable to maintain themselves, and also requires that the amount, nature, and manner of providing assistance be determined with due regard to the conditions existing in each case.

Home conditions are highly relevant and must be seen to be understood and evaluated. One condition of eligi-

bility for ADC is a home situation in which the child's physical, mental and moral well-being will be safeguarded. Hence, the home must be evaluated as to these factors.

An agency may provide recipients with a list of services available, but the recipient may not be aware or willing to acknowledge his need of a particular service, or for some other reason may not request it. On the other hand, an alert and interested worker in a home visit may identify needs for which the agency may offer help, e.g. need for more adequate furnishings (which may be obtained from another community resource) or for repair of or removal from unsafe conditions, such as rickety steps or flooring, too many stairs for heart patient, unsafe heating devices, or an aged or infirm person living in an isolated location. Help can be offered to improve housekeeping or child care though service might never be requested.

In addition, the inter-personal relationships of the family members and their effect on various family members may be observed. This permits an evaluation of the need for and the offering of appropriate services, e.g. placement of an aged or disabled person, or a defective child, services of a homemaker, and the obtaining of necessary medical care.

WHEREFORE deponent respectfully requests that the injunction against home visits be dissolved and the complaint dismissed and for such other and further relief as to the court seems just.

(Sworn to by Eleanor Walsh on June 26, 1969.)

Motion by Defendant Wyman.

UNITED STATES DISTRICT COURT,
SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that upon the summons and complaint and order to show cause, the briefs and orders herein and upon all prior proceedings heretofore had, the undersigned will move this Court on the 30th day of June, 1969 before the statutory three-judge court in Room 705, United States Courthouse, Foley Square, New York, New York, for an order vacating, or in the alternative, modifying the temporary restraining order herein and for an order vacating the class action determination herein.

Dated: New York, New York, June 26, 1969.

Yours, etc.,

LOUIS J. LEFKOWITZ,
Attorney General of the
State of New York,
Attorney for Defendant Wyman,
Office & P. O. Address,
80 Centre Street,
New York, New York 10013.

By BRENDA SOLOFF,
Assistant Attorney General.

To:

DAVID GILMAN,
Attorney for Plaintiffs,
MFY Legal Services, Inc.,
759 Tenth Avenue,
New York, New York 10025.

HON. J. LEE RANKIN,
Corporation Counsel,
Municipal Building,
New York, New York 10007.

Attention Mr. Bernikow

Minutes of Hearing, June 30, 1969.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

Before:

HON. WILFRED FEINBERG, Circuit Judge,
HON. EDWARD C. McLEAN, District Judge,
HON. CHARLES H. TENNEY, District Judge.

New York, June 30, 1969;
2:00 o'clock p. m.

APPEARANCES:

DAVID GILMAN, Esq.,

JONATHAN WEISS, Esq.,
MFY Legal Services, Inc.
and

LEE A. ALBERT, Esq.,
Center on Social Welfare Policy & Law,
Attorneys for Plaintiffs.

LOUIS J. LEFKOWITZ, Esq.,

Attorney General of the State of New York,
Attorney for George K. Wyman, individually and as Commissioner of the State of New York, Department of Social Services;

Brenda Soloff, Esq. Assistant Attorney General,
of Counsel.

Minutes of Hearing, June 30, 1969.

J. Lee Rankin, Esq.,

Corporation Counsel for the City of New York,
Attorney for Jack R. Goldberg, individually and as Commissioner of the Department of Social Services of the City of New York.

Leonard Bernikow, Esq., Assistant Corporation Counsel, of Counsel.

Judge Feinberg: Ladies and gentlemen, I understand that the State has asked for 15 minutes; is that correct?

Miss Soloff: I think that is correct, your Honor.

Judge Feinberg: And that plaintiffs have also asked for 15 minutes; is that correct?

Mr. Gilman: That is correct.

Judge Feinberg: Are there any other requests for time?

Mr. Bernikow: Your Honor, I represent the Corporation Counsel and I may request anywheres from five to ten minutes.

Judge Feinberg: Would you state your name for the record.

Mr. Bernikow: I have already given it to the court reporter.

Judge Feinberg: Fine. All right.

Mr. Gilman: Your Honor, we would like to reserve five of our minutes for rebuttal, if that is possible.

Judge Feinberg: All right. Let us proceed.

Mr. Gilman: My name is David Gilman. I am the attorney for the plaintiffs in this action.

Before I begin, I would like to comment, first, upon the submission by the State of the entire case record of the named plaintiff, Mrs. James, as part of their memorandum in this action. That record contains not only confidential information about the family, which would now become part of the public record, but that could be picked up by anyone who would like to read the file; but it is grossly

inaccurate, and not only that, it is irrelevant to any of the issues that are presented to this Court. I would take extreme exception to that submission.

This suit was commenced in this court solely to seek federal remedies because of the violation of federal rights. Those federal rights involve illegal search and seizure of the named plaintiffs and others similarly situated in their homes, and invasion of the sanctity of their homes, and invasion of their privacy.

Plaintiffs allege that there are state-wide regulations and a state-wide statute which are involved in this case, with state-wide applicability. It is this statute and these regulations which plaintiffs claim violate their constitutional rights to be free from illegal search and seizure.

The plaintiffs do not question or oppose the promulgation of regulations by defendants, nor do we question how they administer their program. All the plaintiffs request is federal relief when the promulgation of regulations by defendants results in a violation of plaintiffs' right under the Fourth Amendment, the right to be free from illegal search, their right of privacy.

This case is to establish what are the constitutional dimensions and what are the constitutional limitations upon defendants in the administration of their program as it relates to constitutional protections. We claim that the plaintiffs have had unlawful intrusions upon their privacy due to defendants' actions.

Judge McLean: Has there been any intrusion, lawful or otherwise, yet?

Mr. Gilman: Your Honor, we claim that it has been threatened and we have supplemented our papers by affidavits of twelve named welfare recipients who claim that their right of privacy has been threatened by unlawful intrusion.

The plaintiff in this case has had her aid terminated due to the fact that she has refused to allow entrance into her home.

Judge McLean: The welfare worker wanted to go into the house and she did not want them to go, and then their welfare was terminated in accordance with the regulations, as I understand it?

Mr. Gilman: That is correct.

Judge Feinberg: Nobody actually went in at all?

Mr. Gilman: That is right. Because she insisted upon keeping the worker, case worker, out of the home, the welfare worker could not come in based upon that refusal. Aid was then terminated.

Judge Feinberg: She had her hearing after that?

Mr. Gilman: They were was provided under Kelly v. Wyman a prior hearing before termination. She had a hearing at that time and the hearing was resolved in favor of defendants insofar as they had a right to terminate due to her refusal to allow the worker into the house.

Judge Feinberg: So that as far as her case is concerned, you say that a denial of benefits is based upon an unconstitutional theory?

Mr. Gilman: It is unconstitutional. It is conditioning of welfare upon her waiving her constitutional right to keep strangers out of her home. That is her position.

The facts in this case are exactly as we have just outlined them. Mrs. James refused the worker entrance; because of that, there was termination.

We also claim that other members of the class of injured parties, and we mean anyone who is injured either because they have been terminated, because they have denied entrance, or have been threatened to be terminated if they would not allow the worker in; that these threats of denial of assistance or reductions are the violation that we are alleging is unconstitutional in this matter.

Judge Feinberg: The state says it is necesary to have the welfare workers come into the house, among other reasons, to check on the surroundings for the care of the child. They say they have an obligation and if they cannot see the place, how could they fulfill their obligations?

Mr. Gilman: We are not questioning the defendants' obligations to visit the home. All we are saying is that defendants have to meet the constitutional requirements of the Fourth Amendment. If the defendants feel that it is necessary to go in, they have to act properly and constitutionally. That is our position.

Judge Feinberg: Your position is that in order to check on whether or not a proper home is being furnished for a child, they would have to get a warrant in every case?

Mr. Gilman: They would not have to get a warrant in every case, because not every welfare recipient would bar a case worker coming to the home. Many welfare recipients look forward to the worker's visit and invite the worker in. We are saying for those members of the class who do not want the worker to come into the home unless there is an issue of ineligibility or criminal fraud, that worker has to go and get a warrant like everyone else has to go and get a warrant who is conducting an administrative search.

Judge Feinberg: So your position is, it would be proper for the welfare worker to ask to come in and check; it would only be improper if, after the worker were turned down, termination of benefits were threatened?

Mr. Gilman: That is correct. The worker can ask to come in. As long as it is made clear that that is a voluntary act on the part of the recipient. We do not mean by that that the worker can knock on the door and say, "Can we come in or can we not?" They have to make it very clear that if the worker does not come into the home that aid will not be terminated or reduced.

Judge Tenney: For that reason?

Mr. Gilman: For that reason.

It is the plaintiffs' position that historically the home has been deemed a sacred place and that historically and traditionally the sanctity of the home can only be intruded

upon with a valid search warrant or unequivocal consent.

The cases are very clear on that: McDonald, Agnello and Johnson make that clear.

There have been certain traditional exceptions to the warrant requirement, and those are spelled out. Usually in cases of criminal danger, as incident to a valid arrest, if there is going to be a catastrophe, government officials have to step in. Aside from that, the law has been clear over a long period of time. The cases have held two things: One, a person is secure in his own home. A warrant has to be extended before intrusion will be tolerated; and two, a person's privacy is sacrosanct.

Judge McLean: What would the state and welfare people have to show in order to get a warrant?

Mr. Gilman: They would have to show, your Honor, that there is some evidence, some reason to conclude that there is ineligibility or there is criminal fraud or some criminal activity in that home.

Judge McLean: They could not go in just to see whether it is a fit home for the child?

Mr. Gilman: They can go in to see if it is a fit home if they are invited in, but they have to have some reason to believe that that home is not a fit home.

Judge Feinberg: Suppose they are not invited in? That was the hypothetical I posed to you. Is it your idea that they could not get a warrant merely by saying that we want to check on this home and we ask to be allowed in and we were told no? Do you think they would have to show something more to get a warrant?

Mr. Gilman: I am not sure what a judge sitting, before he issued that warrant, would require them to show, and I am not even suggesting that this Court rule on that issue, but I am saying they would have to convince a member of the judiciary that a warrant is necessary in this particular case.

Judge Tenney: Do you think the various acts that are alleged, the various statements concerning the plaintiff that are set forth in the brief, would be sufficient to justify the issuance of a warrant?

Mr. Gilman: On reading the accusations made in the case record, many of those were just pure hearsay. I would not give them much credulence, but I do not want to stand in support on that matter.

Judge Tenney: I agree.

Mr. Gilman: What I am suggesting is, that is going to be a matter that is going to have to be—

Judge Tenney: At least you have a third party involved, a judge or magistrate or somebody, who is going to pass on the sufficiency of the grounds for the search warrant in those cases where admission to the premises is denied, refused?

Mr. Gilman: That is our point, that it should be the judiciary to make that decision, whether a search warrant is warranted, not the executive branch, not the fact that the agency itself decides that this is the kind of case where we have to go into the home and, therefore, they condition the benefits upon that decision.

Judge Tenney: You might have a nice question whether the assertion of a constitutional right by a person having a home would be sufficient in itself for a judge to issue a search warrant. The mere fact they would not let you know without anything more might pose a serious question about whether that in itself is sufficient ground to issue a warrant.

Mr. Gilman: That may very well be the next case that would come up. There is no doubt that is the next question.

But there are other agencies which also have an obligation to check upon the home conditions, especially if there is an issue raised about, well, a child's abuse or criminal activity.

Judge Feinberg: What other agencies are you referring to?

Mr. Gilman: The Society for the Prevention of Cruelty to Children, the Police Department has an obligation if there is criminal activity to take action.

Judge Feinberg: That is criminal activity. But we are faced with the fundamental question here, and that is, if it is the obligation of the state to be concerned about child care before the money is distributed and before someone is declared eligible, then do they have a way of carrying out that obligation?

Mr. Gilman: Yes. Well, our position is that there are two things which are commingled. There is one, the desire of the Welfare Department to establish eligibility; two, there is the desire of the Welfare Department to give social services. It is unclear where one process begins and the other process ends. It is unclear when the worker comes in, are they solely looking at eligibility factors or are they looking at social service factors? It is not only unclear to us but it is unclear to the worker. Because of the intertwining, the commingling of both these functions, it is difficult to pick them out and say this is going to happen, that is going to happen, some sort of isolated surroundings.

Judge Feinberg: When you say "worker," you mean the Welfare Department worker?

Mr. Gilman: The case worker, right. He is the one that makes the home visit. Until these two are separated out, the client never knows if what she responds to when she thinks she is talking about social services may also be a factor in determining her to be ineligible.

Judge Feinberg: You are arguing a position here. What do you think it ought to be to be separated out?

Mr. Gilman: To be separated out, to be very clear, that any welfare recipient who does not wish a worker into the home can refuse. If a worker needs to come into the

home, the worker must get a warrant as well, just as much as a fire inspector or a health inspector would have to get a warrant.

Judge Feinberg: This is on eligibility as well as everything else?

Mr. Gilman: This is on eligiblity as well as everything else, because once the family is deemed to be eligible, once that family is on assistance, then the presumption should not be that they are ineligible unless they prove eligibity all over again every ix months. The Department should have something to come in and say: I think this family is now ineligible.

Judge Feinberg: That is another question. I was directing myself to the first part, eligibility. You think that on that, that the state should have no right to come into the apartment without a warrant unless he recipient, who wants the welfare, says OK?

Mr. Gilman: That is correct.

What plaintiffs claim is in issue in this matter we feel is properly covered by the case of Camera v. Municipal County or Municipal Court of the City and County of San Francisco. We think that is the case that is covered in this matter.

What we are claiming is that the welfare investigator is in the same shoes as analagous to the fire inspector or the health inspector as would be in See v. Seattle, which is the companion case.

It is our position that the rights of the welfare recipient are the same rights as exercised by other citizens. Because the welfare recipient is receiving welfare does not mean that her Fourth Amendment rights are any less.

The Court held in that case that the civil rights, the rights under the Fourth, are not peripheral to the Fourth Amendment, they are substantial, they are strong. We claim that they extend to the welfare client as well.

The defendants seek this Court to render a decision based on a very novel concept. The defendants in this action claim that the standards should not be the traditional standards of warrant of consent, they say the standards should be reasonableness, reasonableness based not upon what we have traditionally understood to be reasonable, but reasonable as seen in light of the needs, the obligations, the purposes of their agency's function. And that, therefore, because they need it, because it is reasonable, they should be able to make a home visit without a warrant.

They continue to push this theory based upon the fact that there is a confidential relationship which is supposed to be created between the worker and the client, and that because of the agency's concern for the family, the Court ought to promulgate a new standard for government agencies such as the Welfare Department from seeking entrance into the home.

Our position is, one, there is not only no authority for that, but it really means that once a right is violated by a government agency, then that is reasonable and that is constitutional; but if it is not violated by a government agency, such as the Welfare Department, then it is unconstitutional. They are asking just because they have legitimate program purposes and they have the concerns of the family that the Fourth Amendment protection should somehow be watered down. And our position is that certainly should not happen.

Therefore, plaintiffs' claim is that if this is an important right, that this is not a peripheral right, that this Court should rule for the plaintiffs in this action to enjoin the Department from making home visits without warrant, without consent and that we wish a preliminary and permanent injunction to that effect.

Judge McLean: Before you sit down, let me ask you again about this warrant, because there is no sense, as far as I can see, in putting the welfare people to the bur-

den of going and getting a warrant every time they want to inspect the house unless the warrant is going to serve some useful purpose.

What do you think they would have to show to get a warrant?

Mr. Gilman: They would have to show a court that there was some evidence of fraud or concealment of funds or some criminal activity involving the child.

Judge McLean: Why should that be? Why shouldn't they have a right to go in and see whether this is a decent home or not without knowledge what they are going to find before they go there?

Mr. Gilman: I have no problem with that at all, your Honor, and they will probably do it in 90 percent of the cases, but we are suggesting that if there is a welfare recipient that feels that home is a sanctified place, a place which is private unto herself, she has a right, like every other citizen, to say you cannot come into my home.

The real question is, does the Welfare Department need that home visit in order to fulfill its legislative and its statutory purposes, and our position is—

Judge McLean: Is that the question, whether they need it or not?

Mr. Gilman: My point is, your Honor, that information which is necessary about the home can be easily secured through conversations and discussions with that welfare recipient at the local welfare center. There is nothing about that home which needs to be seen by the worker or to establish eligibility or establish or to give social services.

The Department makes the allegation they have to visit. Well, why? In order to inspect, in order to search. That is our position.

Judge Feinberg: Mr. Gilman, I wonder if you can enlighten us, and I intend to ask the state the same questions.

How many families currently receive welfare in New York State? Do you have any idea?

Mr. Gilman: I think there is a million-two or a million-three.

Judge Feinberg: In how many of those cases would you imagine home visits are made?

Mr. Gilman: I would say they are by statute made in just about every case.

Judge Feinberg: Every case.

In how many of those cases would you say there would be resistance to the home visit if it was made clear that the welfare recipient does not have to allow the welfare worker in?

Mr. Gilman: I would be speculating, your Honor.

Judge Feinberg: Have you any idea?

Mr. Gilman: No.

Judge Feinberg: All right.

Miss Soloff: May it please the Court, with respect, first, to Mr. Gilman's objections to our introduction of records, I think that it can first be said that the named plaintiff at least has waived any claim of confidentiality by bringing this proceeding; and in the second place, I think that the record could be protected from further public scrutiny if an application were made.

Judge Feinberg: I took it that such an application was being made.

Is that right, Mr. Gilman?

Mr. Gilman: That is correct.

Judge Feinberg: Do you have any objection to the sealing of those records for the time being?

Miss Soloff: None at all, your Honor.

Judge Feinberg: All right.

Miss Soloff: But I do think that the record is not irrelevant to the issues in this case.

Judge Tenney: This is merely sealed so far as the public is concerned, not so far as the Court is concerned. The record is sealed.

Miss Soloff: That is what I wanted to clear up.

Judge Feinberg: We will consider those documents as sealed, then, for the time being until the Court acts further on this proceeding.

Miss Soloff: Fine, your Honor.

As has been already pointed out several times today, and I won't belabor it, what we are dealing here with is AFDC assistance, which is Aid to Families with Dependent Children, and the object in this program, as in all such programs, is to provide assistance to those who are eligible so long as that assistance is necessary. Eligibility for assistance here depends on the children and it depends on the children in the home. The federal statutes make this quite clear, the state statutes and regulations make this quite clear.

In essence, it insures that these children can be raised at home with their families instead of anywhere else.

Public assistance is not a program of automatic eligibility for all residents; it depends on eligibility being established.

Judge Feinberg: Why can't that be done in an office rather than by a visit to the home?

Miss Soloff: This is really a policy consideration, I think, more than a constitutional consideration. It might be possible for the state to say we will take your word for what standards of eligibility are, whether you are living in the home, the family composition, your needs, the welfare of the child. It might be possible. The state has seen fit, and the federal government certainly encourages if not absolutely requires, to say we want to see the home. We want to make sure that is where you are living, we want to make sure that the services that you are getting are sufficient, we want to make sure that the child is all right.

Judge Feinberg: Miss Soloff, what is it exactly that is being verified? No, 1, I suppose, is that there is such a residence where someone exists?

Miss Soloff: That is right. That there is such a residence.

Judge Tenney. There are other ways of ascertaining that.

Miss Soloff: This is the most direct way. It prevents going to collateral sources—

Judge Tenney: Sometimes it has to give way to maybe a little more inconvenience if you are treading on some constitutional rights here.

Miss Soloff: Verification by direct contact with the client, it would seem to me, if we are talking about privacy, is far more desirable than going to some collateral source, than making inquiries about somebody from a third person.

Judge Feinberg: First of all, there is residence?

Miss Soloff: First of all, there is residence. There is family composition.

Judge Feinberg: Whether there are children, family composition?

Miss Soloff: That is right.

Judge Feinberg: I should have realized you and the other attorneys in the case know the terms a lot better than we do.

Miss Soloff: I am just learning them all; it has been a very educational two weeks.

Judge Feinberg: Isn't that something, for example, that frequently gets referred to on a federal tax return when you are claiming exemptions?

Miss Soloff: I would think so; I do not know.

Judge Feinberg: Offhand, would you say that the Internal Revenue Department would have a right to send an investigator into your house to find out if your claim of an exemption is a proper one?

Miss Soloff: I do not know, your Honor. I really do not know. But the other things that must be verified are

the physical setup of the apartment, is it a suitable apartment, is it physically safe for the child.

Judge Feinberg: What generic term do you welfare experts use for that? Safety or child care or surroundings or what?

Miss Soloff: I would have to call a welfare expert. I am being descriptive rather than absolutely technical, but I think that that is an accurate description.

Judge Feinberg: Whether the surroundings are suitable?

Miss Soloff: Whether the surroundings are suitable, physically, emotionally or morally.

Judge Tenney: A building inspector could not just walk in, could he, under these decisions just cited to see—

Miss Soloff: This is more than a building inspector, your Honor.

Judge Tenney: —whether it was safe for anybody to live in there? But apparently welfare case workers can go in just to see if it is suitable for the child.

Miss Soloff: They also have to verify the health of the child, if the child is all right, if any goods and services that the client may not be aware of are needed. I think this is more fully set forth, your Honor, in the affidavit of Miss Walsh.

Judge Tenney: Are these case workers physicians? Can't some requirement be made that the child reports to some health center for a physical examination?

Miss Soloff: I believe there are such requirements, your Honor.

Judge Tenney: Do they have to go into the home? Do the children have to be in the home when the mother is there? Is that required? Maybe the children are away somewhere.

Miss Soloff: If the children are in school, I believe arrangements are made to see the child.

Judge Tenney: That can be covered without going into the home.

Miss Soloff: The question of whether or not these can be done another way at much more time and with far less reliability as to the results is, I think, not the issue here. I think the issue is whether or not this is a reasonable requirement and I do not think there is anything novel in the concept of reasonableness as the touchstone for this sort of inquiry, both as to the regulation itself and as to whether or not it allegedly impinges on any constitutional right.

Judge Tenney: Isn't unreasonable pretty well restricted now to the reasonable searches as one with a warrant, a search warrant, except in certain very strictly and gradually more limited areas?

Miss Soloff: Most of the discussion in this area, of course, is in the criminal area, which this is not, although Mr. Gilman seems to be trying to turn it into a criminal inquiry and limiting the scope of the inquiry that can be made. First he says yes—

Judge Tenney: Fraud is involved here, isn't it?

Miss Soloff: No, it is not. This is not the thrust of the inquiry at all, and certainly not criminal prosecution. That is not the thrust of the case worker's visit. The case worker is not a policeman and the state does not want to turn him into one.

Now, apparently he says, well, the state does have this obligation to verify this material, but then when it comes to pinning him down as to what a warrant would contain —and I would like to get to that a little more fully in a moment—he says yes, it would have to be by criminal standards. Well, that is just vitiating the whole state policy which, as I said, does have very reasonable objectives.

Judge Feinberg: Miss Soloff, what I am curious about is this suitable surroundings problem, because it does seem to me that whereas you could get evidence as to residence

or information as to residence and family composition pretty easily, by having the welfare recipient go somewhere and give it to you and put it on a form, suitable surroundings, I would think, would be hard put to check if you did not see it eventually. What do you do? What do the welfare people do if they find that the surroundings not suitable? What is it that the remedy is?

Miss Soloff: I suppose there are several remedies. Again, I have not pushed my expertise far enough to give you a definitive answer, and if witnesses or more affidavits are required, we would be willing to provide them, but—

Judge Feinberg: I just want a general idea.

Miss Soloff: Let me say this, if it is simply a question of the physical layout of the apartment, why then, they would help the client to move, to find suitable surroundings. If other agencies need to be called in for services, then there can be a referral to other agencies.

Judge Feinberg: Like what other agancies?

Miss Soloff: I would think those having more directly to do with either child or household services.

The Court: I see.

Miss Soloff: Or medical services. So that this could be the springboard, in other words. As I said before, the client may well not know what is available or what he needs.

Judge Feinberg: I am aware of that point. What I am getting at is this: You are faced with a request for aid and to determine eligibility you have to go through various steps, and one of them is to look at the surroundings. If you think the surroundings are not adequate, would you deny the aid? That is what I am trying to find out.

Miss Soloff: This touches the question of whether or not the homelife can be so conducted, so adjusted, let us say, that the child can remain in the home. I think that might be the ultimate inquiry in a number of cases.

Judge McLean: What happens if you cannot?

Miss Soloff: There may have to be court proceedings with respect to the child.

Judge McLean: Take him out and put him in an institution?

Miss Soloff: That would be the ultimate if the home could not be brought within the standards of the statute, but I am not saying that that is anything like what is the situation in this case.

What I am saying is that might be an ultimate result. Now, others, as I see it, might be serviced.

With respect to denying aid, that would be really a question of need establishing the need and the rest of it.

Judge Feinberg: That part of the problem I understand.

Miss Soloff: I do not think there would a turning and walking away because the homelife is unsuitable.

I think, though, to get back to this Fourth Amendment idea, that to argue that the home visit is an invasion of privacy essentially begs the question, because we have to go to the reasonableness of what is required. Now, it is conceded that information is required to be given. This already is some limitation on privacy, and the plaintiffs concede, yes, they do have to provide information, but they in effect deny the relevance of the home to this information.

Judge Tenney: Isn't it reasonable for a health inspector and a building inspector to check?

Miss Soloff: Yes, and the Supreme Court has so held. They absolutely upheld the area search. I will get to the question of the warrant in that case as opposed to the warrant in this case.

But there is no question that the reasonableness of the inquiry was upheld by the Supreme Court in those cases.

Judge Tenney: But not without a warrant?

Miss Soloff: Not without a warrant in those cases, but this case is distinguishable.

Judge Tenney: That is what we are coming to here. It is just a different type of reasonableness, depending on whether you are a welfare worker or housing inspector.

Judge Feinberg: How are they distinguishable?

Miss Soloff: In the first place, the Supreme Court limited them to that kind of search. Those statutes were enforceable by criminal sanctions. You had a general area search. And here we said the specific standard would have to be a criminal standard. You have a much closer relationship between the welfare client and the agency. This is only one agency that we are talking about, the one with the close relationship. And between a fire inspector and the ordinary building owner.

Judge Tenney: I do not want to interrupt, but, as I read your regulations or instructions to your case workers, that they are not to look in closets or bureaus or anything?

Miss Soloff: That is right.

Judge Tenney: Why not?

Miss Soloff: Because that would be an undue invasion of privacy which the Department has deemed is not necessary.

Judge Tenney: It seems to me that the Welfare Department does have some misgivings.

Miss Soloff: No, I think the Welfare Department has an idea of the dignity of the individual which they are seeking to conserve at the same time as they are trying to carry out their legitimate functions. They are striking I think, a perfectly reasonable balance. They do not allow forced entry, they do not allow midnight raid, they do not allow any of the things which have been attacked so far in any of the other cases, and there is no indication that that occurred here.

Judge Tenney: There is no association with those?

Miss Soloff: Now, the Court in Camera prescribed the need for warrant as allowing the homeowner to verify the need for the entry, the authority by which the entry was made and the scope of the entry.

The Second Circuit, in Matter of Colonnade Catering Corporation, looked at a statute which is not dissimilar to this in that it permitted an inspection of licensed premises, that was, but the rationale was very similar. It said in that case the statute is sufficiently narrow so that there is no question of the scope of the authority. The relationship between the inquiring agent and in that case the licensee was sufficiently defined so that the licensee or the homeowner, I believe the Court indicated, would know who this was and what the scope of his authority was.

One of the things that I think is perfectly clear from the regulations and the documents before this Court is that the homeowner or the client does know that these visits will be made, does know the authority by which they are made, and does know the scope of them. As I have said, it is a sufficiently narrowly drawn statute so that it falls right within, I think, the Colonnade case as far as the necessity for warrant in those cases. And it is distinguishable from Camera, but it is distinguishable from Camera for a number of other very important reasons, and that is that the warrant in a situation like this would really be anathema to the whole structure of the system that was trying to be administered. It would turn workers into—

Judge Tenney: The beginning of a warrant would certainly flag the Welfare Department that there might be some reason to use permitted methods of investigation to build up a sufficient case to justify the issuance of a warrant.

Miss Soloff: But it is not the purpose of the Department to build up a case to start prosecution or to do any—

Judge Tenney: Whatever it is, they want to get into the apartment.

Miss Soloff: They want to get into the apartment for reasons which are clearly specified and beyond which there is no indication that any worker has gone.

What would a warrant solve? It would—

Judge Tenney: Constitutional violations.

Miss Soloff: There are two claims basically that are made, or rather one basic claim has been made in this complaint, one claim at all, and that is questions are asked during home visits which the named plaintiff here and the other twelve feel are inappropriate. We do not know what those questions are. They have never been specified. However, it does not seem to me that any warrant procedure would limit the scope of the inquiry once entry was obtained, so that—

Judge Tenney: Why couldn't the questions be asked at the Welfare Center? Is there some mystique?

Miss Soloff: Because they may relate to a definite physical condition in the house or definite condition that is best observed in the home.

Judge Tenney: How did you manage to buy this TV set or buy this or that or something like that?

Miss Soloff: Possibly. I won't refer to the record in the cases, but there are instances where verification was certainly of some moment.

The other thing is that a warrant would justify entry by force, which is the farthest thing from anybody's mind in this case and seems to be the most objectionable thing of all.

Judge Tenney: While it might justify it, would the Welfare Department exercise that privilege?

Miss Soloff: If they have to go and get the warrant, then they have to execute it. Either the client consents

to the entry or the client does not consent to the entry. Of course, it would not solve the other problem—

Judge Tenney: Having obtained a warrant and then not being able to get in other than by force, you might have some reasonable grounds to terminate eligibility.

Miss Soloff: But there is no reason why this should have to be done, why there should be entry by force.

Judge Tenney: There are a lot of things that can be done easily. The trouble is some of them do infringe on constitutional rights. It would be great if we could do a lot of things that we are circumscribed to doing today, but are circumscribed because we have a Constitution.

Miss Soloff: I come back to the right of privacy which is, as the Supreme Court has said, the Fourth Amendment protects people, not places. This plaintiff admits that she to give information. The information about her home is as relevant about the information about herself. That home is protected only because it is her home and not anybody else's.

To the extent that she is under an obligation to provide information under a reasonable inquiry, not whether it is the most desirable way or whether there may be an alternative way. It is a reasonable way.

Judge Feinberg: Miss Soloff, we have been firing a lot of questions to you, so do not be concerned about being limited to the 15 minutes if there is anything else.

Miss Soloff: Thank you, your Honor.

Judge McLean: I have a question which is relevant here. I think you said in your brief that plaintiff had not exhausted her administrative remedies. What remedies?

Miss Soloff: There are now two-step proceedings in the state courts, after Kelly v. Wyman. The prior review conducted by the local agency, as I understand it, and then there is a state fair hearing, which is possible

and which was not requested by this named plaintiff, and our main point was that once having started it, the administrative process, plaintiff should be required to go through it, and there is another reason for that and that is the lack of specificity in the complaint which I have mentioned before, that is, that we do not know what these questions that are being objected to were all about, whereas, a proper record might reveal them.

Judge Tenney: She has a right, conceivably, she is arguing, she has the right to exclude you from her apartment. She has that right under the Constitution. Now, the fact that she likes or does not like the questions that are asked does not seem to me any basis for saying well, if she does not like these particular questions, then maybe we will look into the nature of the questions rather than the nature of the invasion of the privacy.

Miss Soloff: That is what she says is the nature of the invasion of her privacy, is the only complaint she makes. She says they are asking questions I do not want to answer, but I will come down to the Center and answer them.

What I am saying, basically, is she has no more right of privacy in her home than she has in her person.

Judge Tenney: If she is going to answer the questions at the agency, then whether she likes the questions or does not like the questions, what it boils down to is whether she has to answer these particular questions in her home, and you have accordingly a question of whether you have got an unlawful search or an invasion of privacy, if you wish.

Miss Soloff: The invaion of privacy is a conclusion. It results—

Judge Tenney: I am more concerned with the doctrine.

Miss Soloff: —from whether or not what the government has done is reasonable.

The Fourth Amendment prohibits only unreasonable searches and seizures. Here we do not even have a search and seizure, but apart from that it is a question of whether or not it is reasonable. And to do that we have to look, one, at the purpose, whether it is a legitimate purpose; and two, at the way it is conducted, whether it is conducted properly. And the state requirement in this case is hemmed with all kinds of safeguards from the statutes down through the regulations on the state and local level. It is very clear that they want no undue invasion of privacy, but that they do have a right to have certain information available to them.

Judge McLean: You say there is not any search here and, quite true, that nothing has happened yet—

Miss Soloff: That is right.

Judge McLean: —because the plaintiff would not let anybody in, but I suppose we have to consider what would happen if somebody did get in.

Suppose the welfare worker did go in and did look at the television set and did ask her a lot of questions and did see who was living in the apartment and make a little investigation. Would that be a search?

Miss Soloff: Not certainly under traditional standards.

Judge McLean: What is a search, then?

Miss Soloff: A search would be going through the closets, the drawers, all those things that are forbidden.

Judge McLean: So long as you are just looking around in the middle of the room, that is not searching?

Miss Soloff: I think not.

Judge McLean: That is the distinction you draw?

Miss Soloff: It is certainly not the distinction we rely on. What we rely on is the reasonableness of the procedure, whatever you call it. And the reasonableness, as I said, derives, one, from the purpose; and two, from the way in which it is conducted.

Judge Tenney: Supposing she had a still in her apartment, while you might not run to the police, you might figure she had an outside source of income.

Miss Soloff: You might well ask for an explanation, yes, but you would not have to have that information prior to going in.

Judge Feinberg: Is it my understanding that under the present rules and policies that you can require admission even though you do not have permission? In other words, not by force, but by threatening or actually denying benefits?

Miss Soloff: If the home visit is one that is required to establish eligibility or re-eligibility because it is a recertification process. There is—I forget the section of the statute—but because this is not supposed to be a forever kind of assistance, its recertification is required.

Judge Feinberg: Every what, three months, six months?

Miss Soloff: It is six months for recertification, and every three months for certain statutory personal contacts which may or may not be a home visit, depending on the case.

Judge Feinberg: The last question I have is this: Do you have any feel for what would be the practical result of adopting the position that plaintiffs urge, that is, would most people still allow the welfare worker to come in?

Miss Soloff: I have no way of knowing this, no way at all.

I would need two more minutes to address myself to another issue, and that is the temporary restraining order in this case.

We have argued, I think, as fully as we can, our position, first, that the temporary restraining order should be vacated in this case, because when we talk about irreparable injury, we have to talk about the constitutional doctrine that is allegedly being enforced or violated, and

that in this case it is the home visit which can be complied with pending this litigation. So that there is no irreparable injury in the constitutional sense.

In the alternative, we ask that at least it be modified to include only the named plaintiffs, which was originally the request in the order to show cause and which involved only a restoration of this named plaintiff to assistance pending the outcome of this litigation. I think anything else is really in the nature of a preliminary injunction and is premature.

Judge Feinberg: Thank you.

Mr. Bernikow: Your Honors, may I comment briefly on the remarks that have gone before?

Judge Feinberg: I assume you are going to do more than that. I assume you are going to take a position.

Mr. Bernikow: My name is Leonard Bernikow. I am an Assistant Corporation Counsel, and we represent the defendant Jack R. Goldberg, the Commissioner of Social Services of the City of New York.

I would like to just comment briefly on some of the points that were raised, your Honors.

Firstly, I would like to comment on what Miss Soloff said. She alluded to certain benefits, certain purposes, rather, of the home visits, and in addition to all those manifest purposes which she alluded to, it seems to me that an experienced social worker can get a tremendous amount of benefit from a home visit, a certain intangible benefit, if you will, by seeing the individual recipient in the home environment as well as the children. These we cannot put our finger on and say I am doing it for this or that reason, but I really think, as I said before, there is an intangible benefit.

Judge Feinberg: Suppose that is true, that would fall under that suitable surroundings heading?

Mr. Bernikow: Whatever you want to call it, your Honor.

Judge Feinberg: What would be the result of getting that increased information in the field?

Mr. Bernikow: Your Honors, I feel that the welfare worker is not in the shoes of the fire inspector or the housing inspector who is going into the individual house to look for violations. This welfare worker is going there for the ostensible purpose of helping the individual, and whatever that help would amount to, I do not know what it would be, but certainly the experienced social welfare worker would be in a position to know what agencies the individual might be referred to.

Judge Tenney: Maybe the recipient would be very happy to have the case worker come and would recognize the fact that the case worker is interested in helping out, and that it will enable the case worker to function better if the case worker can observe the surroundings, but we are talking about the issue here, not whether all of these visits should be forbidden, absent the warrant. The issue here is with any particular welfare recipient who does not want to receive these benefits that would come from the case worker having observed the conditions of the home and so on. Must that individual surrender his or her rights to receive benefits because she says I do not want the case worker to come, or I will give the information at the Welfare Center but I will not give it in my home?

Mr. Bernikow: I frankly cannot see how a welfare worker can make an adequate assessment of the situation without coming to the home. I feel the substitute of the office visit does not give him the knowledge which he honestly needs to make an evaluation.

Judge McLean: Is there any variation in the amount of these benefits, depending upon circumstances or is it just a flat dollar amount of so much per child?

Mr. Bernikow: I do not know offhand, your Honor. I would imagine that each case is an individual case and there are various benefits that can accrue to the individual recipient, depending upon their circumstances.

Judge McLean: I am visibly ignorant of this. A woman applies for aid to dependent children. She has got two of them, let us say. What is the criteria that determines whether she is going to get that aid or not? Does all she have to do to get it is have two dependent children?

Mr. Bernikow: Need, based on the income which comes into the home certainly would be, I imagine, the first and most important.

Judge McLean: If she is absolutely impoverished, she gets so much per child, doesn't she?

Mr. Bernikow: That is correct.

Judge McLean: Whether she is living in a nice house or a poor house or whether there is a still in the living room or whether there is not; is that right?

Mr. Bernikow: Yes.

Judge McLean: Then what is the purpose of going in to look at it?

Mr. Bernikow: For the benefit of the children. This is aid to dependent children and there are certainly many benefits that can come from an experienced social worker in improving the lot of this individual. Certainly try to get the person to get back on his feet, not to be dependent on welfare, perhaps, but there are certainly many manifest purposes in these home visits.

Judge Tenney: If it does not affect the amount of money that is going to be paid to these children—I think it would be nice for anybody to have people coming to their home and advise them how they might do better, but I do not think that that necessarily gives them the right to come if the person does not want them to come.

Mr. Bernikow: Now your Honor is going to the issue of whether or not this amounts to a search. I frankly do not feel this is a search. Mr. Gilman has raised certain points, in particular saying that—

Judge Tenney: You mean they are blindfolded when they go? It certainly seems to me it is a search.

Mr. Bernikow: They are not blindfolded, your Honor, but Mr. Gilman has made the point that the only way that a person should come in is on a warrant, and the only way to get a warrant is if there is some suspicion of fraud. Certainly, the majority—

Judge Tenney: That is up to the judge or magistrate, whoever it is who passes on it.

Mr. Bernikow: Indeed, it is.

Judge Tenney: Now it just takes out of the hands of the government agency the right to set its own standards for breaching a constitutional guarantee.

Mr. Bernikow: If we carry Mr. Gilman's argument just a little bit further, the Department of Social Services would never get into the home because certainly certain rights are necessary for a warrant—probable cause.

Now, the majority of welfare recipients in this city do not commit fraud and there would never be any probable cause to issue a warrant, and it would have the effect that no welfare worker could ever come into the home.

Judge Feinberg: What would happen if that happened?

Mr. Bernikow: It would defeat the whole purpose of the legislation and regulation.

Judge Feinberg: I know it would defeat the purpose of that portion of the regulations which calls for the home visits, but how would it defeat it? I am really interested. What would be the result if they were not able to get into the home?

Dr. Bernikow: It seems to me that the welfare system would not operate efficiently; the families would go on unaided, there would be over-utilization, poor quality care for children.

Judge Feinberg: What do you mean by "over-utilization"? That is another one of those terms I need some explanation for.

Mr. Bernikow: It seems to me there might be more welfare given than is needed in certain situations.

I think, getting back to my opening remarks, it is where, I am hoping, that it is the experienced welfare worker who goes in and can see what is actually needed in a particular home as well as the amount of funds that are necessary for this particular home. And, as Judge Tenney said, certainly the welfare worker cannot be blinded to anything that is going on, but certainly they are not going in there as policemen. They have given a week's notice to this individual plaintiff that they were coming. Certainly, you do not do that when you want to discover fraud.

So it seems to me that what they are doing is not a search by any means. They are not looking to discover evidence. And I might even suggest that if that were the case, that they did get the evidence of a fraud and criminal proceedings were instituted, then the individual recipient had his remedy at a pretrial motion to suppress.

But my only comment is I do not equate these home visits, which I have tried to put across are not searches, with the unreasonable searches prescribed by the Fourth Amendment.

Thank you very much.

Judge Feinberg: Did you want a few minutes for rebuttal?

Mr. Weiss: Yes, your Honor. Let me just attempt to clarify what seems to be three essential issues which stalks this case. They involve a right, a reason and a rule, I believe, which ties them together.

The right of the right, which is the Fourth Amendment, stakes out only partially, and that is the right of the sanctity of your own home. The right which has been mentioned in other decisions and in a more peripheral context, the right to privacy. This is the right that we seek to have protected here.

The injunction we seek is to prevent all damages to that right, damages either by forfeiture of that right, a forfeiture which is forbidden under cases such as Spevak v. Klein and Garrity v. New Jersey, or the punishment to exercise that right of denying benefits as in the case of the named plaintiff.

What we seek to enjoin are all practices which inhibit, invade or punish for the assertion of the right to be secure in the home, the right which has been staked out under the decisions of the Fourth Amendment and other ones.

The government seeks to justify invasions, sanctions and so on, of its right by purported statutory reasons. But these reasons—

Judge Feinberg: They do more than that. They say it is for the benefit of the welfare recipient. I do not think you can take that lightly.

Mr. Weiss: I think what they offer is not what the Welfare Department does in fact offer. If we are interested in the welfare of the child, there are appropriate government agencies. All people have the right, just as welfare clients are claimed to have here, to the wonderful visit of a social worker. All parents have the same right to sanctity of home from invasions by government agencies, but when those government agencies, such as the Bureau of Child Welfare, Society for the Prevention of Cruelty to Children, and such organizations want to go there, into a home, they follow the laws of the state.

There is the Family Court Act here, neglect proceedings, to look into the suitability of surroundings which applies to all, welfare recipients and non-welfare recipients alike. Just because the family one day has need also of funds should not open them up to the types of inquiries that others do not have, or if you want the types of punitive benefits of the visits of social workers. All families in this country fall under the purview of statutes which deal with parental rights, the rights of children to be secure

from abuse and neglect. Welfare recipients are no different.

The same applies to arguments about building violations. It appears the figures are roughly that 75 percent of welfare recipients here in New York live in buildings defined by the Building Department as defective. Other people who live in those buildings are not welfare recipients. All have the same rights to be free from people coming into their homes, all have the same rights not if in fact they want to be invited in. Welfare recipients are no different in view of these legitimate state purposes which are appropriate for other agencies than the Welfare Department.

If there is reason to believe that they are not suitable surroundings for infants, any infants, be it on welfare or not, should immediately be taken care of by somebody going into Family Court, filing a neglect petition, and having a proper investigation. There would be no mutual assumption that somehow people on welfare should be open to some sort of inquiry which may or may not result in the neglect petition.

Which brings me to the third point. The rule that generally governs legitimate government objectives in the sanctity of the home is, after all, the warrant. Normally, the justification for invading a home is danger to public safety. This is what is at stake in your traditional search cases. You have no such danger to public safety, though, by the way, you do have the possibility of criminal referral.

The case of the still, it seems to me fairly clear under the welfare provisions of notification of law enforcement officers to any criminal evidence turned up, would have to be referred to appropriate criminal authorities raising considerable questions as to whether or not this is not a criminal search.

In any event, all they can be talking about in coming into the home is not traditional public safety, but, in fact,

suitable home or buildings which are appropriate investigative things for other agencies, or perhaps the amount of money, which can be done by forms or, in the case of fraud, by investigations.

In a case such as Colonnade, where you have a specific licensing request for permission and specifically go into a locale to find specific material objects, you have, of course, another exception which is in the root of a regulatory system, which—

Judge Tenney: In the home?

Mr. Weiss: It was a commercial establishment pursuant to a liquor license where, in fact, the danger was specifically stated that sophisticated people may destroy the evidence. The welfare visit, which they claim quite often notice is given a week ahead, no such rationale exists.

A warrant should issue when there is probable cause, that is, sufficient evidence of a specific item which a judge can take normal notice of to justify whatever agency is pursuing its statutory objectives by going into the home. You have a right to a warrant, for example, obviously, in a criminal case where you have a specific item of evidence that will lead you to believe something about a crime so you can go in and do that.

Judge McLean: You would not allow the issuance of a warrant just to enable the Welfare Department to carry out its own ideas of how welfare should be administered; is that right?

Mr. Weiss: If I undertand the question, yes. I think insofar as they want a warrant just to go in for their own administrative convenience, clearly not.

Judge McLean: They have a theory that it does some good to see what kind of a home these children are living in. Now, that is not enough to issue a warrant?

Mr. Weiss: No, I do not think it is.

Judge McLean: They would have to show some cause to believe there was a crime being committed?

Mr. Weiss: Not necesarily a crime. That there might be the final judicial limits. What the limit is, they must show something wrong is going on, and if they are the appropriate agency in a neglect situation, it might be possible; if you have reason to believe, for example, a father were beating to death a child and assuming you did not have access to a criminal warrant because that is a crime.

Judge McLean: How are they going to find out unless they go in?

Mr. Weiss: It is the same issue you have with every family. Every family in the country may be in fact doing things bad for the children.

Perhaps I myself, your Honor, could have used a social worker as a child. My parents are free from that intrusion, they are not on welfare.

If the New York State had passed a law saying every single family in New York must have a home visit twice a year to see if the parents are doing a good job, that would clearly be unconstitutional. So, too, it is unconstitutional.

The only differentiating mark is people going on welfare pushed as they are by economic necessity. There is really no distinction.

They cannot find out in the case of a normal citizen, who perhaps they would if they could, and should not be able to in the case of a welfare citizen.

I suggest that there are agencies who do find many ways to find out if something is going on. There are many neglect petitions filed in the State of New York against welfare recipients and non-welfare recipients. That is the appropriate agency for inquiring into whether or not something is going on in the home. In fact, if somebody goes on welfare there is no reason to open themselves up to more scrutiny, more invasion of privacy in this lawless, warrantless way.

Judge Feinberg: Thank you. We will take the matter under advisement.

Memorandum Re NOLEO Provisions.

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July 2, 1969

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Project Director

PAUL DODYK
Faculty Director

The Honorable Wilfred J. Feinberg
Circuit Judge
United States Court of Appeals
United States Courthouse
Foley Square
New York, New York

The Honorable Charles Tenney
District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York

The Honorable Edward C. McLean
District Judge
Southern District of New York
United States Courthouse
Foley Square
New York, New York

Re: James v. Goldberg
69 Civ. 2448

Honorable Sirs:

In response to Judge Tenney's request for information concerning the NOLEO provisions and the fraud provisions

as they operate in the context of home visits in New York, we enclose the attached memorandum.

Sincerely,

Nancy Duff Levy
David Gilman
Jonathan Weiss
Lee A. Albert
Henry A. Freedman
Nancy Duff Levy

Counsel for Plaintiff

cc: Brenda Soloff
Assistant Attorney General
Leonard Bernikow
Assistant Corporation Counsel

Memorandum Re NOLEO Provisions.

The Fraud Provisions

Section 145 of the Social Welfare Law provides that:

> Any person who by means of a false statement or representation, or by deliberate concealment of any material fact, or by impersonation or other fraudulent device, obtains or attempts to obtain, or aids or abets any person to obtain public assistance or care to which he is not entitled, or does any wilful act designed to interfere with the proper administration of public assistance and care, shall be guilty of a misdemeanor, unless such act constitutes a violation of a provision of the penal law of the state of New York, in which case he shall be punished in accordance with the penalties fixed by such law. Failure on the part of a person receiving public assistance or care to notify the public welfare official granting such assistance or care of the receipt of money or property or income from employment or any other source whatsoever, shall, upon the cashing of a public assistance check by or on behalf of such person after the receipt of such money, or property, or income, constitute presumptive evidence of deliberate concealment of a material fact. Whenever a public welfare official has reason to believe that any person has violated any provision of this section, he *shall* refer the facts and evidence available to him to the appropriate district attorney or other prosecuting official. (emphasis added)

As the court held in *People* v. *LaFace,* 148 Misc. 238, 266 N.Y.S., 458, the essence of the crime under this section in the *false representation of eligibility* for public assistance, and it makes no difference whether the assistance is obtained or could be obtained.

The regulations of the Department of Social Services further implement this statutory provision by specifying particular measures to be taken designed to prevent and detect fraud. See 18 NYCRR 348. While there is no explicit statement that misrepresentations about eligibility will result in criminal prosecution for fraud, the breadth of the fraud statute and its interpretation in the *LaFace* case, *supra,* indicate that such misrepresentations are clearly within the statute. Further, Department regulations place upon the applicant or recipient of public assistance the affirmative continuing responsibility of providing accurate, complete and current information on his needs and resources, of applying for and utilizing any benefits or resources that will reduce or eliminate [illegible] for public assistance, and of notifying the local agency of any changes in his needs and resources. 18 NYCRR 351.1. This continuing responsibility, coupled with Section 145 and the general provisions of the Penal Law relating to larceny and misrepresentation, Penal Law §§ 155 *et seq.*, 170 *et seq.*, 175 *et seq.*, operate to require that misrepresentations about eligibility be referred by the Department to the appropriate district attorney or other prosecuting official.*

As discussed in Plaintiffs' main brief, evidence leading to a criminal fraud prosecution may, of course, be obtained by a home visit. Thus, although Defendants argue that actual fraud investigations are only one purpose of the home visit, clearly any misrepresentation of eligibility made by the recipient and revealed to the caseworker during the home visit would also constitute welfare fraud which must be referred to law enforcement officials.

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* In 1968, for example, solely on the basis of alleged undisclosed assets of over $500, 247 cases were referred by the Resources Division of the Department of Social Services to New York City prosecution. Allegations of fraud in other cases (*e.g.*, larceny, forgery) resulted in 127 referrals to prosecution in that same year.

Memorandum Re NOLEO Provisions.

The NOLEO Provisions

The NOLEO (Notice to Law Enforcement Officials) provisions of the Social Security Act provide for the detection of parents suspected of child neglect and for the apprehension of deserting and abandoning parents.

Thus, title 42, U.S.C. 602(a)(16), (17), (18), requires that a state plan for aid and services to needy families with children must provide that:

> [16] where the State agency has reason to believe that the home in which a relative and child receiving aid reside is unsuitable for the child because of the neglect; abuse or exploitation of such child it shall bring such condition to the attention of the appropriate court or law enforcement agencies in the State, providing such data with respect to the situation it may have; [17] provide
>
> (A) for the development and implementation of a program under which the State agency will undertake—
>
> (i) in the case of a child born out of wedlock who is receiving aid to families with dependent children, to establish the paternity of such child and secure support for him and
>
> (ii) in the case of any child receiving such aid who has been deserted or abandoned by his parent, to secure support for such child from such parent (or from any other person legally liable for such support), utilizing any reciprocal arrangements adopted with other States to obtain or enforce court orders for support, and

(B) for the establishment of a single organizational unit in the State agency or local agency administering the State plan in each political subdivision which will be responsible for the administration of the program referred to in clause (A);

[18] *provide for entering into cooperative arrangements with appropriate courts and law enforcement officials* (A) to assist the State agency in administering the program referred to in clause [17] (A), including the entering into of financial arrangements with such courts and officials in order to assure optimum results under such program, and (B) *with respect to any other matters of common concern to such courts or officials and the State agency or local agency administering the State plan.*" (emphasis added)

The significant part of the language is as follows: the requirement of a single organizational unit in the state agency or local agency which will be responsible for the administration of the Notice to Law Enforcement Officials program; the requirement that where the state agency has reason to believe that the home in which the child is residing is unsuitable because of neglect, abuse, or exploitation of such child, the agency shall bring such condition to the attention of the appropriate court or law enforcement agencies; the encouragement to states to enter into reciprocal arrangements to obtain or enforce orders for support; the encouragement to the state agency to establish an informational relationship with law enforcement officials and family courts for matters of common concern to the respective agencies.*

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* For New York regulations implementing these provisions see 18 NYCRR 347.

Thus, any information gathered by the caseworker during a home visit with respect to any situation which might lead to an action for child neglect or child support is required to be referred to the prosecutive agencies of the state. The caseworker, who has a confidential relationship with the recipient, and who maintains supposedly confidential files on the recipient, is nonetheless charged with the legal obligation to report information which may be adverse to either or both parents to the proper authorities.*

Of course, welfare administration has historically been enshrouded with law enforcement activity, Bell, *Aid to Dependent Children* (1965), and New York is no exception, *e.g., Peo.* v. *Pickett,* 19 NY2d 170 (1967). What the NOLEO provisions accomplished at the time of their enactment in the late 1940's was the transfer of the element of discretion from welfare to law enforcement officials. This transfer thus makes the welfare agency an intimate part of the process of coercion and compulsion in apprehending deserting or abandoning parents, and the welfare agency is, theoretically, at least, denied any discretion in the matter.

Other provisions of the Social Security Act dealing with NOLEO require that the state welfare agency report to the Secretary of Health, Education and Welfare "at such time and in such manner" as the Secretary may prescribe:

> (A) The name, and social security account number, if known, of each parent of a dependent child or children with respect to whom aid is being provided under the State plan—

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* While these provisions do not explicitly impose an obligation to furnish information on the recipient or applicant of public assistance, their obvious self-incrimination potential should also be noted, and, in fact is now being challenged in the Connecticut case of *Doe* v. *Shapiro,* Civ. No. 13093 (D. C. Conn. 1969) (TRO granted April 28, 1969).

(i) against whom an order for the support and maintenance of such child or children has been issued by a court of competent jurisdiction but who is not making payments in compliance or partial compliance with such order, or against whom a petition for such an order has been filed in a court having jurisdiction to receive such petition, and

(ii) whom it has been unable to locate after requesting and utilizing information included in the files of the Department of Health, Education, and Welfare . . .

(B) the last known address of such parent and any information it has with respect to the date on which such parent could last be located at such address, . . . 42 U.S.C. 602(a)(21).

The Secretary of Health, Education, and Welfare is then charged with the responsibility of furnishing to the Secretary of the Treasury, or rather, more accurately, the Department of Internal Revenue, the names and social security account numbers of such parents. The IRS must then endeavor to ascertain the address of each such parent from the files of the Internal Revenue Service, and so furnish the address to the state agency which submitted the report. 42 U.S.C. 610. These provisions, hence, bring in federal agencies, HEW and the Internal Revenue Service, in locating the whereabouts of an abandoning or deserting parent.

From the above, it is obvious that the public assistance laws are surrounded with the likelihood of criminal prosecution. Such prosecutions can take a variety of forms, including welfare fraud, adultery, criminal neglect of children, and also child neglect proceedings in which a parent loses custody of the child. While the latter is not strictly a

criminal proceeding, it certainly is quasi-punitive, involving the forfeiture of one's own child. *Cf. Armstrong* v. *Manzo,* 280 U. S. 545 (1965).

It is equally clear that information which must be referred to law enforcement officials may be obtained during a home visit. Thus, to the client, the home visit is tinged not only with the threat of a cut-off of funds necessary to the existence of life itself, but it is also tainted with the threat of penal sanctions against the recipient and the abandoning or deserting parent, and tinged with the threat of removal of the children from the home.

The required enforcement of the federal NOLEO provisions can thus lead to the criminal prosecution of the recipient and/or members of her family as readily as can the discovery of fraud by the welfare agency. Just as prosecution for welfare fraud may result from evidence obtained during a home visit, so may prosecution for child neglect or child support result from such a visit.

Reply Memorandum of Law in Behalf of Defendant Wyman.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

This memorandum is submited in reply to plaintiffs' contention that because certain statutes provide for prosecution for welfare fraud, all welfare investigations must be conducted within the ambit of criminal law standards.

The belated injection by plaintiffs of this issue into this case, an issue not even suggested by the complaint, is wholly without merit and is completely irrelevant to the issues in the case at bar. The only purpose of the home visit is to determine eligibility and continuing eligibilty for public assistance. There is nothing in the record in this case to support an inference that its purpose is to obtain information of criminal fraud. The home visit is merely to obtain information not available by an office visit during which further information is also requested which can, under plaintiffs' analysis suffer from the same defect as the home visit. In fact neither the office visit nor the home visit is conducted with the view toward prosecution for fraud. The number of fraud convictions in welfare cases, considering the number of people receiving public assistance is minimal indeed. In 1966 the total number of convictions obtained by the Department of Social Services and by the district attorneys of the counties of the City of New York in misdemeanor and felony cases was 84; in 1967 the total number was 50 and in 1968 the total number was

22.* Many convictions under the Welfare Law are not even convictions of recipients of public assistance, but involve such things as stolen and forged welfare checks. Moreover, there is no indication that any of these convictions stemmed from anything learned at a home visit. Typically, convictions result from failure to disclose other sources of income such as social security or workmen's compensation benefits or failure to disclose employment.

The idea that information which might prove damaging might be obtained in the course of legitimate investigation during which certain information is required to be supplied, is not a reason to require criminal standards to govern the investigation. The Supreme Court has, indeed, rejected the notion that eligibility for some sort of public benefit may not be removed by a failure to disclose relevant information with a proviso that information so obtained is not to be used in a criminal prosecution. *Gardner* v. *Broderick*, 392 U. S. 273 (1968). Thus, if information were obtained from a home visit and that information were used to form a basis for a criminal prosecution, it might be open to plaintiff to move to suppress any evidence so obtained. As the Court said in *Hill* v. *United States*, 346 F. 2d 175 (9th Cir.), *cert. denied* 382 U. S. 956 (1965):

> "If a criminal prosecution does subsequently take place, appellant can raise by a motion to suppress any evidence which the government may have secured in vioation of his constitutional rights."

Thus, if it were determined that evidence obtained by virtue of a home visit was not to be the subject of a criminal

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* This information has been supplied by the legal division of the New York City Department of Social Services.

prosecution, the criminal prosecution would be the place to raise the issue. The possibility of such prosecution which is merely remote and speculative does not excuse the obligation to provide necessary information.

The fact that strict standards of probable cause do not govern all administrative inquiries is amply demonstrated not only in the cases cited in our main memorandum of law, but also for example in *United States* v. *DeGrosa*, 405 F. 2d 926, 928 (3d Cir. 1969) involving an internal revenue summons and *United States* v. *Glaziou*, 402 F. 2d 8 (2d Cir. 1968) involving customs inspections. Any routine inquiry required to be made to verify information may lead to consequences not foreseen at the time of the inquiry and which are not the purpose of the conduct of the inquiry. As simple a situation as the offer of a check to a bank teller might lead to a prosecution if the signature cannot be verified and proves to be forged. However, it is not the purpose of the verification to prosecute for fraud but merely to protect the funds of the bank. In the instant cases, we have said it is not the purpose of the home visit to obtain evidence for prosecution. There are an infinitestimal number of convictions for welfare fraud, and any objection to evidence can be made at the time it is offered. The attempt to bring all administrative proceedings within the criminal process is wholly unwarranted, and would prove intolerable to the sound administration of such agencies. The obligation of the State to the children it supports by virtue of the Aid to Dependent Children Program would not support awaiting evidence of criminal abuse. In this respect, it is to be noted that the oral argument made on behalf of plaintiffs that children under this program should be treated no differently from children not receiving such aid wholly overlooks the special nature of the obligation of the State toward the children it has specifically undertaken to support in their homes.

CONCLUSION

The complaint should be dismissed.

Dated: New York, New York, July 11, 1969

Respectfully submitted,

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State of New York
Attorney for Defendant Wyman

SAMUEL A. HIRSHOWITZ
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Assistant Attorney General
of Counsel

Opinion of Three Judge-Court.

TENNEY, District Judge:

Plaintiff individually and on behalf of her minor child and all other persons similarly situated, seeks injunctive and declaratory relief pursuant to Rule 57 of the Federal Rules of Civil Procedure and Section 1983, United States Code, Title 42, to secure rights, privileges and immunities under the Fourteenth Amendment to the Constitution of the United States, and Titles IV and XVI of the Social Security Act, 42 U.S.C. §§ 601 *et seq.*, 1381 *et seq.* and the regulations promulgated thereunder. Jurisdiction is conferred upon this Court by 28 U.S.C. § 1343(3)(4), which provides for the original jurisdiction of district courts in suits authorized by 42 U.S.C. § 1983, and by 28 U.S.C. §§ 1331, 2201, 2202.

This suit, commenced by order to show cause on June 6, 1969, seeks to prevent the termination of Aid to Families with Dependent Children (hereinafter referred to as "AFDC") benefits for failure to consent to the entry into plaintiff's home of officials of the Department of Social Services (hereinafter referred to as "the Department") upon the grounds that such termination constitutes a violation of both plaintiff's right to be secure in her home from unreasonable searches thereof and of her right to privacy. By order dated June 13, 1969, the District Court Judge, after memoranda and affidavits had been submitted and oral argument had thereon: (1) ordered, pursuant to 28 U.S.C. §§ 2281, 2284, the convocation of a statutory three-judge district court to consider the substantial constitutional questions relating both to the Fourth Amendment's stricture against unreasonable searches and seizures and to the penumbral right of privacy and repose raised herein; (2) found that the action may properly proceed as a class action puruant to Fed. R. Civ. P. 23; and (3) granted, pursuant to 28 U.S.C. § 2284(3), a temporary

restraining order protecting plaintiff and the "class" she represents from the denial or termination of AFDC benefits based solely upon their refusal to consent to the entry of officials of the Department into their homes, pending the determination by the full court of plaintiff's application.

Thereafter, additional memoranda and affidavits were submitted, and, on June 30, 1969, oral argument was had before the three-judge court.

The facts underlying the issues presented reveal that plaintiff, a resident of the City and State of New York, Bronx County, has been a recipient of AFDC benefits for the past two years. On May 8, 1969, she received a letter from her caseworker requesting an appointment to visit her at home on May 14, 1969. Plaintiff replied that while she was willing to discuss issues and supply any information reasonable and relevant to her continued receipt of public assistance, under no circumtances could the caseworker make a home visit. The caseworker explained that Department regulations require that she visit plaintiff in her home to discuss the recertification of her case, and that refusal by plaintiff to permit such a home visit would result in the termination of her AFDC benefits. While reiterating her willingness to provide whatever information was requested at the offices of the Department, plaintiff continued to deny the caseworker entry into her home.

On May 13, 1969, the Department sent plaintiff a notice of intent to discontinue her AFDC benefits based upon her refusal to permit such a home visit. On May 27, 1969, a hearing held prior to the termination of public assistance was conducted at the offices of the Department. Thereat, plaintiff again reiterated her desire to supply information relevant to her present needs, but declined to discuss such needs in her home. The Department's review officer, after determining that such home visits were required by law, upheld the caseworker's decision to terminate benefits effective June 2, 1969.

In reaching this decision, the review officer relied upon Section 175 of the Policies Governing the Administration of Public Assistance, which, in pertinent part, provides:

> "Mandatory visits must be made in accordance with law that requires that persons be visited at least once every three months if they are receiving Home Relief, Veteran's Assistance, or Aid to Dependent Children, and at least once every six months if they are receiving Old Age Assistance, Aid to the Disabled or Assistance, to the Blind."

This Section was promulgated in accordance with Section 134 of the New York State Social Welfare Law,[1] and Sections 351.10, 351.21 of Title 18 of the New York Code of Rules and Regulations.[2]

In opposition to plaintiff's application for a permanent injunction restraining and enjoining the enforcement of these City and State Departments of Social Services Regulations on the grounds that they violate the First, Fourth, Fifth, Sixth, Ninth, Tenth and Fourteenth Amendments to the Constitution of the United States, defendants argue that: (1) the home visit is neither a search nor a seizure, but is merely designed to verify information as to eligibility for public assistance and is thus reasonably related to a valid governmental policy;[3] (2) the home visit is designed to make available to the recipient of AFDC benefits professional counseling so that the recipient can best utilize his limited resources;[4] (3) since the receipt of public assitance is a privilege, citing *King* v. *Smith*, 392 U. S. 309 (1968), plaintiff is obligated to provide necessary information so that this privilege can be recognized and implemented;[5] and (4) in contradictory statements, "[t]here may be fraud . . . which should come to the attention of the administrative agency and which would not without home visits,"[6] and "[i]t is not the purpose of

home visits to look for evidence of fraud or other criminal activity and there is no suggestion that entry is sought for these purposes.'"

The issue presented for determination by this statutory court, simply put, is whether the Department of Social Services can deny, reduce or terminate AFDC benefits to otherwise eligible persons who refuse to allow caseworkers to enter their homes without a warrant, issued upon probable cause. For the reasons which follow, we find that the Department may not.

The Fourth Amendment to the Constitution explicitly affirms the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." The overriding function and basic purpose of this Amendment is to safeguard the personal privacy, security and dignity of individuals against the arbitrary or unwarranted intrusion of governmental officials. *Camara* v. *Municipal Court of the City & County of San Francisco,* 387 U. S. 523, 528 (1967); *Schmerber* v. *California,* 384 U. S. 757, 767 (1966); *United States* v. *Mancusi,* 379 F. 2d 897, 903 (2d Cir. 1967), *aff'd,* 392 U. S. 364 (1968). The Amendment gives concrete expression to a right of the people which "is basic to a free society." *Wolf* v. *Colorado,* 338 U. S. 25, 27 (1949). As such, this right of privacy has been declared enforceable against the states through the Due Process Clause of the Fourteenth Amendment. *Stanford* v. *Texas,* 379 U. S. 476, 481 (1965); *Ker* v. *California,* 374 U. S. 23, 30 (1963); *Mapp* v. *Ohio,* 367 U. S. 643, 655 (1961).

Except in certain carefully defined classes of cases,[8] a search of a private dwelling without a warrant or proper consent is presumptively "unreasonable". *Katz* v. *United States,* 389 U. S. 347, 357 (1967); *Camara* v. *Municipal Court of the City & County of San Francisco, supra* at 528-29; *Frank* v. *Maryland,* 359 U. S. 360, 380 (1959)

(Douglas, J., dissenting); *Agnello* v. *United States,* 269 U. S. 20, 32 (1925). Therefore, the following issues present themseves for determination: (a) are the home visits required by the Department of Social Services in connection with the initial and continuing finding of eligibility "searches" within the meaning of the Fourth Amendment; (b) was the Fourth Amendment designed to protect plaintiff and the "class" she represents; and (c) assuming that (a) and (b) are answered in the affirmative, may the State condition the initial and continuing receipt of AFDC benefits upon a waiver of rights embodied in the Fourth Amendment?

Upon oral argument, the Attorney General urged that home visits could not be considered a "search" within the meaning of the Fourth Amendment in that caseworkers are instructed not to enter the home of an applicant for or recipient of benefits "without permission by force, or under false pretenses, and not to make a search of the home by looking into closets and drawers.'" The Fourth Amendment, however, governs all intrusions by agents of the public upon personal privacy and security. *Terry* v. *Ohio,* 392 U. S. 1, 18 n. 15 (1968). Any unauthorized physical penetration into the premises occupied by plaintiff is a search. In view of the fact that recent cases have expanded the scope of the Amendment so as to eliminate the necessity for a finding of an actual physical trespass upon a constitutionally protected area, *Berger* v. *New York,* 388 U. S. 41, 50-53 (1967) and the cases cited therein, defendant's restrictive argument would appear frivolous. The zone of privacy created by the Amendment encompasses the "sanctity of a man's home and the privacies of life" and therefore must consist of something more than his closets and drawers. *Boyd* v. *United States,* 116 U. S. 616, 630 (1886); see also *Griswold* v. *Connecticut,* 381 U. S. 479, 484 (1965).

The Court in *Camara* v. *Municipal Court of the City & County of San Francisco, supra* at 530, found that while a routine inspection of the physical condition of private property was a less hostile intrusion that the typical policeman's search for the fruits and instrumentalities of crime, nevertheless the community interest in municipal fire, health and housing inspection programs was not superior to the important interests safeguarded by the Fourth Amendment's protection against official intrusion. We find this dispositive of the first issue presented and, accordingly, home visits must be considered "searches" within the meaning of the Fourth Amendment.

The guarantee of protection against unreasonable searches extends to the innocent and guilty alike. *McDonald* v. *United States,* 335 U. S. 451, 453 (1948); see also *Hoffa* v. *United States,* 385 U. S. 293 (1966), *rehearing denied,* 386 U. S. 940, 951 (1967); *Lewis* v. *United States,* 385 U. S. 206 (1966), *rehearing denied,* 386 U. S. 939 (1967). Like most of the Bill of Rights, the Fourth Amendment was not designed to be a shelter for criminals, but a basic protection for everyone. It reaches all, whether accused of crime or not. *Abel* v. *United States,* 362 U. S. 217, 254-56 (1960) (Brennan, J., dissenting); *Weeks* v. *United States,* 232 U. S. 383, 392 (1914). Since the most effective preventive against unlawful searches is the exclusion of their fruits from criminal evidence, this right must be upheld when asserted by those who transgress the law. But it cannot be inferred from this that the central thrust of the guarantee is to protect against a search for such evidence. "It is the individual's interest in privacy which the Amendment protects, and that would not appear to fluctuate with the 'intent' of the invading officers." *Abel* v. *United States, supra* at 255. As Judge Prettyman argued in *District of Columbia* v. *Little,* 178 F. 2d 13, 16-17 (D. C. Cir. 1949), *aff'd on other grounds,* 339 U. S. 1 (1950):

> "[T]he common-law right of a man to privacy in his home . . . is one of the indispensable ultimate essentials of our concept of civilization. It was firmly established in the common law as one of the bright features of the Anglo-Saxon contributions to human progress. It was not related to crime or to suspicion of crime. It belonged to all men, not merely to criminals, real or suspected. . . . To say that a man suspected of crime has a right to protection against [the] search of his home without a warrant, but that a man not suspected of crime has no such protection, is a fantastic absurdity."

Judge Prettyman added that the Fourth Amendment applied to health inspectors as well as to police officers—indeed to every and any official of government seeking admission to any home.

> "We emphasize that no matter who the officer is or what his mission, a government official cannot invade a private home, unless (1) a magistrate has authorized him to do so or (2) an immediate major crisis in the performance of duty affords neither time nor opportunity to apply to a magistrate. This right of privacy is not conditioned upon the objective, the prerogative or the stature of the intruding officer. His uniform, badge, rank, and the bureau from which he operates are immaterial. It is immaterial whether he is motivated by the highest public purpose or by the lowest personal spite."

Judge Prettyman's argument was first accepted by Mr. Justice Douglas in his dissent to the Opinion of the Court in *Frank* v. *Maryland, supra* at 377-78. Subsequently, *Frank* was overruled by *Camara,* wherein the Court approved Judge Prettyman's holding by finding that "[i]t

is surely anomalous to say that the individual and his private property are fully protected by the Fourth Amendment only when the individual is suspected of criminal behavior. . . . [E]ven the most law-abiding citizen has a very tangible interest in limiting the circumstances under which the sanctity of his home may be broken by official authority. . . .'"[10]

Therefore, governmental power to make a warrantless search is no greater even if the object of the search is not related to the discovery of evidence of welfare fraud or other criminal activity. *Abel* v. *United States, supra* at 254-56; *Iowa* v. *Union Asphalt & Roadoils, Inc.*, 281 F. Supp. 391, 408 (S. D. Iowa 1968). To attempt to draw a distinction regarding the applicability of the Amendment dependent upon whether the caseworker intends to counsel the recipient as to how best to utilize his limited resources or to look for evidence of fraud, would invite a trial of every official's purpose—a task which would undoubtedly pervert the intent of the Amendment. There exists no valid reason for varying the protection afforded by the Amendment even assuming that the home visit is an effort to deal with a purely "social problem". See *Verdugo* v. *United States,* 402 F. 2d 599, 611 n. 20 (9th Cir. 1968). Accordingly, plaintiff and the "class" she represents must be afforded the guarantees of the Fourth Amendment.

Even if we assume that AFDC grants are a privilege or governmental gratuity,[11] the power of government to decline to extend these benefits to its citizens "does not embrace the supposedly 'lesser' power to condition the receipt of those benefits upon any and all terms." *Parrish* v. *Civil Service Comm'n of the County of Alameda,* 66 Cal. 2d 260, 425 P. 2d 223, 57 Cal. Rptr. 623, 630 (1967). For to deny plaintiff even a gratuitous benefit because of the exercise of a constitutional right effectively impedes the exercise of that right. *Thompson* v. *Shapiro,* 270 F. Supp.

331, 336 (D. Conn. 1967), *aff'd*, —— U. S. ——, 37 U.S.L.W. 4333 (1969). While this Court clearly recognizes the necessity of and desirability for procedures which will enable the Department of Social Services to administer its programs with a minimum of loss due to fraudulent claims or the unwise allocation of these grants by deserving but inexperienced recipients, to the end that the limited funds provided by government may best be used to relieve the needs of those persons in actual want, see 81 C.J.S. Social Security & Public Welware § 9 n. 70 (1953), when the conditions annexed to the enjoyment of these benefits require a waiver of rights secured by the Constitution, the governmental entity seeking to impose those conditions must show a compelling state interest therefor. No showing merely of a raional relationship to some valid governmental policy will suffice. *Sherbert* v. *Verner*, 374 U. S. 398, 406 (1963); *Speiser* v. *Randall*, 357 U. S. 513 (1958); *Weiman* v. *Updegraff*, 344 U. S. 183, 191-92 (1952); *American Communications Ass'n* v. *Douds*, 339 U. S. 382, 390 (1950); *Thomas* v. *Collins*, 323 U. S. 516, 530 (1945). Nor will it suffice for the state to show merely that the public interest justifies the type of search in question. For the issue is not whether the public interest justifies home visits, but whether the initial or continued receipt of ADFC benefits can in consonance with the Constitution be made dependent upon the applicants' or recipients' submission to *warrantless* searches.[12]

The public interest may demand creation of a general exception to the Fourth Amendment's warrant requirement only when it can be demonstrated "that there are available no alternative means less subversive of constitutional right, narrowly drawn so as to correlate more closely with the purposes contemplated by conferring the benefit." *Parrish* v. *Civil Service Comm'n of the County of Alameda*, *supra*. Permissive legislative goals may not be pursued

by means that significantly inhibit fundamental personal liberties when the end can be more narrowly achieved. *Elfbrandt* v. *Russell*, 384 U. S. 11, 18 (1966); *Shelton* v. *Tucker*, 364 U. S. 479, 488 (1960). This Court cannot with deference to the Fourth Amendment excuse the absence of a search warrant without a showing by those who seek exemption from the constitutional mandate that the exigencies of the situation make that course imperative. *Terry* v. *Ohio, supra; Berger* v. *New York, supra* at 114 (White J., dissenting); *McDonald* v. *United State, supra* at 456; see also *Garrity* v. *New Jersey*, 385 U. S. 493 (1967); *Spevack* v. *Klein*, 385 U. S. 511 (1967). No such showing has been made herein.[13]

Less drastic means may be suggested for achieving the same basic purposes for which the City and State urge home visits are designed. Proof of actual residence may be ascertained, for example, by the submission of a duly-executed leave upon the premises in question. Family composition may be verified by the submission, in this instance, of birth certificates. The physical well-being of the child could be safeguarded by making available facilities for periodic medical examinations rather than by requiring routine home visits by caseworkers. This is especially true since there is no assurance that the child will even be present when the home visit is made. Information regarding goods or services which the recipient may need in the management of her home can equally be obtained in the offices of the Department should the recipient wish to make her needs known there rather than in the convenience of her home. The regularity of school attendance, academic achievement and information gathered from interviews with school personnel can more accurately reflect the effects of a child's home environment than an interview with his or her parent in the home.

Should any of these factors or other circumstances or evidence indicate the propriety of or necessity for the search

of private property in a particular case, application may be made to an appropriate judicial officer who, utilizing the standard of "probable cause", will test the particular decision to search against the constitutional mandate of reasonableness. Should this official determine that a valid public interest justifies the intrusion contemplated, then there exists probable cause to issue a suitably restricted search warrant. In this respect it must be noted that the Court in *Camara* v. *Municipal Court of the City of County of San Francisco, supra* at 539, emphasized that "a health official need [not] show the same kind of proof to a magistrate to obtain a warrant as one must who would search for the fruits or instrumentalities of crime." This would appear applicable to the instant proceedings.

As previously indicated, the Attorney General has suggested that it is not the purpose of the home visit to look for evidence of criminal activity. This Court, however, must take notice of Section 145 of the Social Welfare Law, which provides that:

> "Any person who by means of a false statement or representation, or by deliberate concealment of any material fact, or by impersonation or other fraudulent device, obtains or attempts to obtain, or aids or abets any person to obtain public assistance or care to which he is not entitled, or does any wilful act designed to interfere with the proper administration of public assistance and care, shall be guilty of a misdemeanor, unless such act constitutes a violation of a provision of the penal law of the state of New York, in which case he shall be punished in accordance with the penalties fixed by such law. Failure on the part of the person receiving public assistance or care to notify the public welfare official granting such assistance or care of the receipt of money or property or income from employment or any other source whatsoever, shall,

upon the cashing of a public assistance check by or on behalf of such person after the receipt of such money, or property, or income, constitute presumptive evidence of deliberate concealment of a material fact. *Whenever a public welfare official has reason to believe that any person has violated any provision of this section, he shall refer the facts and evidence available to him to the appropriate district attorney or other prosecuting official.*" (Emphasis added.)

The Court in *People* v. *La Face*, 148 Misc. 238, 266 N.Y.S. 458 (Westchester County Ct. 1933) found that "the crime as defined under section 148 of the Public Welfare Law," a section substantially identical to Section 145 of the present Social Welfare Law,[14] "is not the consummation of fraud upon a particular department. The essence of the crime is the false representation in an application for relief. It makes no difference whether the relief is obtained or could have been obtained." The breadth of the interpretation given the fraud statute in *La Face*, coupled with the fact that this Court must assume that caseworkers will comply with the provisions of Section 145 by referring facts or evidence of welfare fraud gathered by them in the course of home visits to the appropriate prosecuting official, sustains the view that home visits may appropriately be considered searches for evidence of welfare fraud or other criminal activity.[15] As such, they become unauthorized intrusions upon the sanctity of plaintiff's home when consent thereto is not freely given.

Defendants argue further that plaintiffs must first exhaust available administrative remedies prior to seeking a federal forum. However, one of the purposes of the Civil Rights Act, 42 U.S.C. § 1983, 28 U.S.C. § 1343, is "to provide a remedy in the federal courts supplementary to any remedy any State might have." *McNeese* v. *Board of*

Educ., 373 U. S. 668, 672 (1963). Relief under the Civil Rights Act may not, therefore, be defeated for failure to exhaust available state administrative remedies. *Damico* v. *California*, 389 U. S. 416, 417 (1967); *Kelly* v. *Wyman*, 294 F. Supp. 893 (S.D.N.Y. 1968).

The Court of Appeals for the Second Circuit in the recent decision in *The Colonnade Catering Corp.* v. *United States*, Docket No. 32817 (2d Cir., filed March 26, 1969) upheld a warrantless search by Internal Revenue Service agents of a catering establishment which held a New York State liquor license. In reversing the district court's order suppressing certain evidence seized, the Court of Appeals went to great lengths to distinguish *Camara* and *See* v. *City of Seattle*, 387 U. S. 541 (1967). The Court found that in contrast to the broad delegation of inspection power authorized in *Camara* and *See*, the statutory grants of inspection power under review were carefully defined and narrowed so that they granted "little, if any, more authority than that which would be extended in a warrant issued by a magistrate after review." We find no such limitations upon the power of caseworkers to enter and search the homes of applicants for or recipients of public assistance. It is not sufficient that caseworkers are instructed not to enter by force or under false pretenses and not to look in closets and drawers.

Further, the Court of Appeals noted that "[d]ealers in liquor, *unlike homeowners* or businessmen conducting less specialized activities, are engaged in a heavily regulated business," (emphasis added) and, therefore, as "sophisticated licensees . . . are undoubtedly acquainted with the limits upon the agent's inspection rights." No such presumptions may properly be made herein. Defendant's reliance on *Colonnade* is, therefore, misplaced.

Accordingly, we find that the City and State may not condition the initial and continuing receipt of AFDC bene-

fits upon a waiver of rights embodied in the Fourth Amendment. A contrary holding would threaten to "produce a result which the State could not command directly." *Speiser* v. *Randall, supra* at 526.

Doubtless there exists a pressing State interest in preventing such anti-social behavior as child abuse or neglect. But we see no reason why, in this respect, all families should not be treated alike. Specified procedures now exist under which the State can intervene in such circumstances to determine whether a child is neglected and, should such a finding be made, to regulate the neglected child's home or, if necessary, remove him from his home to insure that his needs are properly cared for.[10]

It is hoped that caseworkers will continue to be welcomed into the homes of welfare recipients so that their professional expertise may most effectively be utilized to the greatest advantage of their "clients". However, when entry is barred, benefits may not be denied or terminated solely on this basis.

This Court recognizes the importance of eliminating from welfare rolls those whose receipt of benefits is undeserved. Such efforts, however, must be, and clearly can be, conducted with due regard for the constitutional rights of welfare recipients. The laudable goal of beneficially supervising the expenditure of public funds will not be hindered or prejudiced by compliance, when necessary, with the Fourth Amendment's warrant procedure.

The oft-quoted protest of William Pitt would appear particularly, if not ironically, sound:

> "The poorest man may in his cottage bid defiance to all the force of the Crown. It may be frail—its roof may shake—the wind may blow through it—the storm may enter, the rain may enter—but the King of

England cannot enter—all his force dares not cross the threshold of the ruined tenement!"

Plaintiffs' motion for a permanent injunction is granted. Submit order, on notice, in conformity herewith.

Dated: New York, New York, August 18, 1969.

WILFRED FEINBERG
U.S.C.J.

CHARLES W. TENNEY
U.S.D.J.

FOOTNOTES

[1] "The public welfare officials responsible . . . for investigating any application for public assistance and care, shall maintain close contact with persons granted public assistance and care. Such persons shall be visited as frequently as is provided by the rules of the board and/or regulations of the department . . . in order that any treatment or service tending to restore such persons to a condition of self support and to relieve the distress may be rendered and in order that assistance or care may be given only in such amount and as long as necessary."

[2] "18 NYCRR 351.10. *Required Home Visits* and Contacts. Social investigation as defined and described . . . shall be made of each application or reapplication for public assistance or care as the basis for determination of initial eligibility.

a. Determination of initial eligibility shall include contact with the applicant and at least one home visit which shall be made promptly in accordance with agency policy. . . ."

"18 NYCRR 351.21. *Required Contacts.* Contacts with recipients and collateral sources shall be adequate as to content and frequency and shall include home visits, office interviews, correspondence reports. . . ."

[3] Memorandum of Law in Behalf of Dependant Wyman, dated June 26, 1969 at 5.

[4] *Id.* at 17.

[5] *Id.* at 26.

[6] *Supra* note 4.

[7] Memorandum of Law in Behalf of Defendant Wyman, *supra* note 3 at 31-32. By his affidavit of June 26, 1969, Leonard Bernikow, Assistant Corporation Counsel representing defendant Jack R. Goldberg, relies upon the brief submitted by the Attorney General for defendant George K. Wyman.

[8] As Mr. Justice Douglas noted in his dissent in *Frank* v. *Maryland,* 359 U. S. 360, 380 (1959):

> "We have emphasized over and over again that a search without a warrant can be made only in exceptional circumstances. If a house is on fire or if the police see a fugitive enter a building, entry without a search warrant can of course be made."

Additionally, under recently restricted circumstances, a warrantless search may be made as incident to a lawful arrest. *Chimel* v. *California,* —— U. S. ——, 37 U.S.L.W. 4613 (1969).

[9] Letter from Jack R. Goldberg to Lee A. Albert, April 11, 1969. Appendix A of Supplemental Memorandum in Support of Plaintiffs' Motion for Preliminary and Permanent Injunction.

[10] *Camara* v. *Municipal Court of the City & County of San Francisco*, 387 U. S. 523, 530-31 (1967).

[11] Recent scholarship has urged that the distinction between "rights" which are said to be vested and "privileges" which are said to be a mere government gratuity, be abolished. French, Comment: Unconstitutional Conditions: An Analysis, 50 Geo. L. J. 234, 236-39 (1961). Professor Charles Reich's theory of "entitlement" suggests that welfare benefits are no longer gratuities but have assumed at least some of the characteristics of "rights". Reich, Individual Rights and Social Welfare: The Emerging Legal Issues, 74 Yale L. J. 1245 (1965); Reich, The New Property, 73 Yale L. J. 733 (1964). See O'Neill, Unconstitutional Conditions: Welfare Benefits With Strings Attached, 54 Calif. L. Rev. 443 (1966).

[12] An analogy may be drawn between the listing of dependents on an income tax return and the listing of dependent children on applications for public assistance. Yet, could it be successfully argued that the right to obtain an income tax exemption for such dependents may lawfully be made dependent upon the taxpayer's consent to the warrantless entry into his home of Internal Revenue Service Agents?

[13] In this respect it should be noted that the Department of Health, Education and Welfare has proposed the elimination of individual investigations, except for spot checks, and the substitution of a declaration system under which the "agency accepts the statements of the applicant for or recipient of assistance, about facts that are within his knowledge and competence . . . as a basis for decisions regarding his eligibility and extent of entitlement." Dept. of HEW, Determination of Eligibility for Public Assistance Programs, 33 Fed. Reg. 17189 (1968).

[14] Section 148 of the Public Welfare Law provided:

> "Any fraud or false representation made by an applicant for relief, or by any person to secure relief for another person, or any wilful act designed to interfere with the proper administration of public relief and care, shall be deemed a misdemeanor."

[15] See also, in this context, 42 U.S.C. § 602(a)(16), (17), (18); N. Y. Penal Law §§ 155 *et seq.*; 18 NYCRR 347, 348, 351.1.

[16] Family Court Act Art. 3. (McKinney 1963).

McLEAN, D. J., dissenting

I am unable to agree with the court's conclusion in this case. We are concerned here with a program of public assistance to dependent children who are to be cared for in their own homes. 42 U.S.C. § 601. It is essential that the welfare workers who administer this program enter the children's homes to ascertain the conditions under which they live. The purpose of the visit is to assist the children, not to catch the children's mother in a violation of the law. To my mind it is unrealistic to regard this visit as a "search," and even more so to hold it to be an unreasonable search.

The court's opinion does not make clear what showing is to be made to obtain the warrant which the court considers necessary. If a warrant can issue only upon a showing of probable cause that the law has been violated, then the fundamental purpose of the program is ignored. Aid to dependent children becomes in effect another criminal statute. If, on the other hand, the welfare worker can obtain a warrant merely by pointing out the need to inspect the home in order to carry out her duties, then the warrant is a mere formality. The need is evident. A welfare worker's time should not be wasted in elaborating the obvious. Reading leases (if in fact there are any), birth certificates, school records and the like, cannot be an adequate substitute for first-hand observation of living conditions in the home. What the warrant will do, in my opinion, is to introduce a hostile arm's length element into the relationship between the welfare worker and the mother of the children, a relationship which can be effective only when it is based upon mutual confidence and trust.

Camara and *See* involved true searches. Those cases are distinguishable on their facts from this one. They do not

require the result which the court has reached here. The court has extended the doctrine of those cases in order to reach this result, thereby striking a damaging blow to the successful administration of this important social welfare program.

I would deny the motion and dismiss the action.

Dated: August 18, 1969

EDWARD C. McLEAN,
U.S.D.J.

ORDER FOR PERMANENT INJUNCTION

Plaintiffs having moved this Court pursuant to Title 28, United States Code, Section 2281, for a permanent injunction enjoining defendants Wyman and Goldberg from denying, reducing or terminating public assistance to plaintiff and the class she represents, solely on the grounds of her refusal to consent to the entry into her home of welfare officials without a valid Search Warrant and this motion having been considered by this Court:

Upon the pleadings, affidavits and briefs submitted on behalf of the parties, and the hearings held to date, it is

ORDERED, ADJUDGED AND DECREED that Section 134 of the New York State Social Services Law, Section 175 of the Policies Governing the Administration of Public Assistance, and Sections 351.10, 351.21 of Title 18 of the New York Code of Rules and Regulations are invalid and unconstitutional in so far as they authorize or require state and local officials to deny, reduce, or terminate Aid to Families with Dependent Children benefits on the ground that the applicant therefor or the recipient thereof refuses

to consent to home visits by welfare officials; and it is further

ORDERED, ADJUDGED AND DECREED that defendants, their successors in office, agents and employees and all persons in active concert or participation with them, are hereby enjoined from depriving otherwise eligible persons of Aid to Families with Dependent Children benefits by reason of their refusal to freely consent to the entry of welfare officials into their dwelling places without a valid Search Warrant.

Dated: New York, New York, October 1, 1969.

WILFRED FEINBERG
U.S.C.J.

CHARLES W. TENNEY
U.S.D.J

I DISSENT:

EDWARD C. McLEAN
U.S.D.J

Defendant Wyman's Notice of Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

SIRS:

Notice is hereby given that GEORGE K. WYMAN, defendant above named, hereby appeals to the Supreme Court of the United States from the final order, judgment and decree granting the plaintiffs' application for declaratory relief ordering, adjudging and decreeing that Section 134 of the New York State Social Services Law, Section 175 of the Policies Governing the Administration of Public Assistance, and Sections 351.10 and 351.21 of Title 18 of the New York Code of Rules and Regulations are invalid and unconstitutional insofar as they authorize or require state and local officials to deny, reduce or terminate Aid to Families with Dependent Children benefits on the ground that the applicant or recipient refuses to consent to home visits by welfare officials and further granting plaintiffs motion for a permanent injunction enjoining the defendants from refusing or terminating such benefits to persons who refuse freely to consent to the entry of welfare officials into their dwelling places without a valid search warrant.

The final order was entered on October 1, 1969.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Dated: New York, New York, October 23, 1969.

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Defendant Wyman's Notice of Appeal.

To:

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Attention: Mr. Bernikow.

Defendant Goldberg's Notice of Appeal.

UNITED STATES DISTRICT COURT,

SOUTHERN DISTRICT OF NEW YORK.

[SAME TITLE]

SIRS:

PLEASE TAKE NOTICE that JACK R. GOLDBERG, individually and as Commissioner of the Department of Social Services of the City of New York hereby appeals to the Supreme Court of the United States from the final order, judgment and decree granting the plaintiffs' application for declaratory relief ordering, adjudging and decreeing that Section 134 of the New York State Social Services Law, Section 175 of the Policies Governing the Administration of Public Service Assistance, and Sections 351.10 and 351.21 of Title 18 of the New York Code of Rules and Regulations are invalid and unconstitutional insofar as they authorize or require state and local officials to deny, reduce or terminate Aid to Families with Dependent Children benefits on the ground that the applicant or recipient refuses to consent to home visits by welfare officials and further granting plaintiffs motion for a permanent injunction enjoining the defendants from refusing or terminating such benefits to persons who refuse freely to consent to the entry of welfare officials into their dwelling places without a valid search warrant.

The final order was entered on October 1, 1969.

This appeal is taken pursuant to 28 U.S.C. Section 1253.

Dated: New York, November 25, 1969.

Yours etc.,

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